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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~1036.~~ 661

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFFS IN ERROR,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 28, 1886.

tion of the defendant is neither within the letter nor spirit of the provision in question. It is a general law applicable to all cases of like character.

But the Legislature has the power to provide summary proceedings for the collection of taxes, and within the limitations pointed out in our original brief may exercise the widest discretion in selecting the means of collecting taxes. It may provide one mode for one class and another for another. It may use distraint as to one kind of property and suit as to another; but whatever the mode adopted, it can shape it as it will, always recognizing those rights that inhere in the citizen, and which cannot be taken from him in any free Government.

And we especially insist that that paragraph of the Constitution which inhibits the passage of special acts regulating the practice of *courts of justice* has no relation to, nor was it intended in any way to control, the State in the matter of the collection of taxes. That provision has relation alone to such cases as are ordinarily within the jurisdiction of courts, and must be presumed to have been so intended, and cannot be construed so as to affect the power of the State in determining upon the mode in which it will proceed to enforce the payment of taxes; and especially is this so since the Constitution enjoins upon the State Legislature the duty of passing "all laws necessary to carry out the provisions" of article XIII. This places the remedies exclusively with the Legislature, and authorizes the Legislature to do whatever its judgment may dictate in this matter.

We therefore respectfully submit that the law in question does not violate any provision of the Constitution of the State.

GEO. A. JOHNSON, *Att'y-Gen'l*,
S. SHELLABARGER,
J. M. WILSON,
For Plaintiffs in Error.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Complaint.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), Defendant.

Comes now the plaintiff and complains of said defendant, The Southern Pacific Railroad Company, and for cause of action states:

1. That the said defendant is, and for more than a year last past has been, a corporation organized and existing under the laws of said State, and during all that time has been and still is the owner of and operating a railroad in the counties of Fresno, Kern,
2 Los Angeles, Monterey, San Benito, San Bernardino, San Diego, San Mateo, Santa Clara, Santa Cruz, Tulare, and in the city and county of San Francisco, in said State.

2. Plaintiff avers that on the 18th day of August, in the year 1883, the State board of equalization assessed the franchise, roadway, road-bed, rails, and rolling-stock of the defendant at the sum of $13,000,000.00; that the board apportioned the said assessment as follows:

To the county of Fresno the sum of $267,692.00.

To the county of Kern the sum of $2,291,281.00.

To the county of Los Angeles the sum of $2,127,202.00.

To the county of Monterey the sum of $735,742.00.

To the county of San Benito the sum of $263,511.00.

To the county of San Bernardino the sum of $2,615,557.00.

3 To the county of San Diego the sum of $2,371,603.00.

To the city and county of San Francisco the sum of $109,-884.00.

To the county of San Mateo the sum of $374,739.00.

To the county of Santa Clara the sum of $885,339.00.

To the county of Santa Cruz the sum of $32,099.00; and to the county of Tulare the sum of $925,351.00.

3. That the defendant is indebted to the plaintiff for State and county taxes for the year eighteen eighty-three in the following sums:

For State taxes, in the sum of sixty-four thousand six hundred and ten dollars.

For county taxes of the county of Fresno in the sum of $3,488.02.

For county taxes of the county of Kern in the sum of $26,418.46.

For county taxes of the county of Los Angeles in the sum of $19,016.03.

For county taxes of the county of Monterey in the sum of $8,115.23.

For county taxes of the county of San Benito in the sum of $3,170.03.

4 For county taxes of the county of San Bernardino in the sum of $27,803.37.

For county taxes of the county of San Diego in the sum of $32,158.93.

For city and county taxes of the city and county of San Francisco in the sum of $1,318.60.

For county taxes of the county of San Mateo in the sum of $4,320.74.

For county taxes of the county of Santa Clara in the sum of $8,170.21.

For county taxes of the county of Santa Cruz in the sum of $418.24; and for the county taxes of the county of Tulare in the sum of $10,669.29.

Together with five per cent. added to each of said several sums for non-payment of taxes, and also for interest on each of said several sums at the rate of two per cent. per month from the 31st day of December, 1883, and for costs and counsel fees, as provided by law.

Wherefore plaintiff demands judgment for said several
5 sums, and prays that an attachment may issue in form, as prescribed in section 540 of the Code of Civil Procedure.

JAMES A. WAYMIRE,
W. T. BAGGETT,
Attorneys for the Plaintiff and the Controller.

(Endorsed:) Filed Feb. 23d, 1884. Wm. T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

6 *Authorization that Jas. A. Waymire and Wm. T. Baggett Begin Action Ag'st Defendant.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD CO., Defendant.

I hereby authorize James A. Waymire, Esq., and Wm. T. Baggett, Esq., to begin an action in the proper court against the above-named defendant in the name of the People of the State of California, in accordance with law, to collect the delinquent taxes for 1883 upon the property of said defendant assessed by the State board of equalization, together with all costs, penalties, interest, and attorney's fees allowed by law. I also authorize the said attorneys to sue out attachments and to take all other steps necessary to the collection of said moneys.

Sacramento, Feb. 21, 1884.

JOHN P. DUNN,
Controller.

Endorsed: Filed Feb. 23, 1884. Wm. T. Sesnon, clerk, by J. D. Ruggles, dept. clerk.

7 *Affidavit of J. E. Foulds.*

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,

vs.

THE SOUTHERN PACIFIC R. R. Co., Def't.

J. E. Foulds, being first duly sworn, on oath says that he is one of the permanently retained attorneys of the said defendent; that there has been no extension of time to answer the complaint in said action granted either by order or stipulation; that the time to answer expires on the 4th day of March, 1884, and that said defendant cannot within said time obtain the facts necessary to its defense; that in order to present said defense it will be necessary to make examination of records in Sacramento and other counties in the State, and such examination cannot be concluded before the 25th day of March, 1884, as affiant is informed and believes.

8 Wherefore said defendant prays for an order of said court extending its time to answer, demur, or plead in said action to the 25th day of March, 1884.

J. E. FOULDS.

Subscribed and sworn to before me this 3d day of March, 1884.

J. D. RUGGLES,
Deputy County Clerk.

Endorsed: Filed March 3, 1884. Wm. T. Sesnon, clerk, by J. D. Ruggles, dept. clerk.

9 *Order that Defendant Have Further Time to Plead.*

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,

vs.

THE SOUTHERN PACIFIC RAILROAD Co., Def't.

Good cause being shown, the time to answer, demur, or plead to the complaint in the above-entitled action is hereby extended to and including the 25th day of March, 1884.

San Francisco, March 3d, 1884.

JNO. F. FINN, *Judge.*

Endorsed: Service of a copy of within order is hereby admitted this 4th day of March, A. D. 1884. James A. Waymire. W. T. Baggett. Filed March 4, 1884. Wm. T. Sesnon, clerk, by Wm. J. Rightmire, dep. clerk.

10 *Order that the Writ of Attachment Issue.*

In the Superior Court of the State of California in and for the City and County of San Francisco. (Dep'tm't 3.)

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHEN PACIFIC RAILROAD COMPANY, Defendant.

It is ordered in the above-entitled cause that the clerk issue the writ of attachment as demanded by the plaintiff.

March 6th, 1884.

JNO. F. FINN, *Judge.*

Endorsed: Filed March 7th, 1884. Wm. T. Sesnon, clerk, by Wm. J. Rightmire, dep. clerk.

11 *Answer.*

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 11835-3.

Now comes the defendant and, answering the complaint of plaintiff filed herein—

I.

Denies each and every allegation in said complaint had, made, or contained; denies that it now is or ever has been a corporation organized or existing under the laws of the State of California, or that it now is or ever has been the owner or operator of a railroad in the counties of Fresno, Kern, Los Angeles, Monterey, San Benito, San Bernardino, San Diego, San Mateo, Santa Clara, Santa Cruz, Tulare, or in the city and county of San Francisco, in said State, except as hereinafter specifically set out; denies that on the 18th day of August, 1883, or at any other time, the State board of equalization assessed the franchise, roadway, road-bed, rails,
12 or rolling-stock of defendant at the sum of $13,000,000.00, or any other sum; denies that said board ever apportioned said pretended or any assessment to the county of Fresno in the sum of $267,692.00, or any other sum; to the county of Kern, in the sum of $2,291,281.00, or any other sum; to the county of Los Angeles in the sum of $2,127,202.00, or any other sum; to the county of Monterey in the sum of $735,742.00, or any other sum; to the county of San Benito in the sum of $263,511.00, or any other sum; to the county of San Bernardino in the sum of $2,615,-557.00, or any other sum; to the *to the* county of San Diego in the sum of $2,371,603.00, or any other sum; to the city and county of San Francisco in the sum of $109,884.00, or any other sum; to the county of San Mateo in the sum of $374,739.00, or any other sum; to the county

of Santa Clara in the sum of $885,339.00, or any other sum; to the county of Santa Cruz in the sum of $32,099.00, or any other sum; to the county of Tulare in the sum of $925,351.00, or any other sum; denies that it is indebted to plaintiff for State or county or any taxes for the year 1883, or for any other year, in any sum or sums
13 whatever; denies that it is indebted to plaintiff for State or any taxes in the sum of sixty-four thousand six hundred and ten ($64,610.00) dollars, or any other sum; or for county taxes for the county of Fresno in the sum of $3,488.02, or any other sum; or for county taxes for the county of Kern in the sum of $26,418.46, or any other sum; or for county taxes for the county of Los Angeles in the sum of $19,016.03, or any other sum; or for county taxes for the county of Monterey in the sum of $8,115.23, or any other sum; or for county taxes for the county of San Benito in the sum of $3,170.03, or any other sum; or for county taxes for the county of San Bernadino in the sum of $27,802.37, or any other sum; or for county taxes for the county of San Diego in the sum of $32,158.93, or any other sum; or for county taxes for the city and county of San Francisco in the sum of $1,318.60, or any other sum; or for county taxes for the county of San Mateo in the sum of $4,320.70, or any other sum; or for county taxes for the county of Santa Clara in the sum of $8,170.21, or in any other
14 sum; or for county taxes for the county of Santa Cruz in the sum of $418.24, or any other sum; or for county taxes for the county of Tulare in the sum of $10,669.29, or any other sum, as alleged in said complaint, or at all.

Denies that it is indebted to plaintiff in the sum of five or any per cent. added to each or any of said several sums for non-payment of said alleged or any taxes; denies that it is indebted to plaintiff for interest on each or any of said several sums at the rate of two or any per cent. per month from the 31st day of December, 1883, or from any other time or day, or for costs or counsel fees, as provided for by law, or at all.

Defendant refers to and makes part of this subdivision the matter stated in subdivisions two to thirty-five of this answer.

15 And for further and separate answer defendant avers as follows:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

The defendant is a corporation existing under the laws of the United States and of the State of California (as will hereafter more fully appear). The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. Some of its stockholders and members now are and ever have been citizens of the United States, resident in said State of California; and some of its stockholders and members now are and ever have been citizens of the United States, resident in States other than the State of California. In the year 1868 it was duly or-

ganized under an act of the Legislature of the State of California, approved May 20th, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the
16 affairs thereof, and other matters relating thereto;" and the term of its existence was fixed at fifty years from the date of its organization; and it is still a corporation, duly organized under said law, except in so far as its organization, existance, and character may be affected or modified by the Federal statutes hereinafter referred to.

III.

S. P. R. R.—The uses and purposes thereof.

As such corporation it constructed a line of railroad and procured the rolling-stock and all appurtenances thereunto belonging, known and designated as the Southern Pacific Railroad (of California), described as follows: Commencing on the waters of the Pacific Ocean in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco and through the county of Santa Clara to Tres Pinos, in the county of San Benito, with a branch threfrom running from Carnadero, in the county of Santa Clara, to Soledad, in the county of Monterey. Said line of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction by way of Tehapechi Pass, Mojava, and Los Angeles to the Colorado river at Fort Yuma,
17 with three branches from said line at Los Angeles, extending respectively to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas and Pacific railroad, at Sierra Blanca, in the State of Texas, by three railroads, to wit, the Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona; the Southern Pacific railroad (of New Mexico), extending from said eastern boundary line across New Mexico to the western boundary of Texas, and the Galveston, Harrisburg and San Antonio railroad, extending from said last-named boundary to Sierra Blanca. Said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean at San Francisco, for the uses and purposes and in the manner contemplated by the acts of Congress hereinafter referred to.

From Tres Pinos to Huron the said Southern Pacific railroad has not been completed, but, pending its construction, con-
18 nection between said points is made over the lines of the Central Pacific railroad. Defendant has completed the construction of the road from said Southern Pacific railroad to the Colorado river, at or near the Needles, to connect with and has there connected with the Atlantic and Pacific railroad hereinafter referred to, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress hereinafter referred to chartering the Atlantic and Pacific Railroad Company.

IV.

Length of road in the several counties.

Of said Southern Pacific railroad (of California) there had been, prior to the first Monday in March, 1883, completed, and there was in operation in the several counties through which it runs, 780.74 miles, to wit, in the city and county of San Francisco, 7.36 miles; in the county of San Mateo, 25.10 miles; in the county of Santa Clara, 59.30 miles; in the county of Santa Cruz, 2.15 miles; in the county of San Benito, 17.65 miles; in the county of Monterey, 49.28 miles; in the county of Fresno, 17.93 miles; in the county of Tulare, 61.98 miles; in the county of Kern, 153.47 miles; in the
19 county of Los Angeles, 142.48 miles; in the county of San Bernardino, 85.19 miles, and in the county of San Diego, 158.85 miles, and all within the State of California.

V.

Act of Congress of July 27th, 1866—Atlantic and Pacific act.

On the 27th day of July, 1866, the Government of the United States undertook to construct or cause to be constructed a line of railroad from a point at or near the town of Springfield, in the State of Missouri, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as might be found suitable for a railroad route to the Colorado river at such point as might be selected, and thence by the most practicable and eligible route to the Pacific Ocean, and to that end Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," which act was approved on said 27th day of July, 1866, and to said act defendant here refers by title and makes it part of this answer.
20 (See United States Statutes at Large, vol. 14, page 292.)
By said act certain persons therein named were made and erected into a corporation under the name and style of the "Atlantic and Pacific Railroad Company."

VI.

Intent of Congress in passing acts of 1866.

The intent and purpose of Congress in passing said act was to secure the completion of a railroad from the Missouri river to the Pacific Ocean, with a branch to San Francisco, and to secure the use thereof for all time to come to the Government of the United States for the transportation of its mails, troops, munitions of war, and public stores.

VII.

Like privileges and immunities granted to defendant.

To facilitate the construction of said road the Government of the

United States, by said act of Congress, adopted the defendant as the instrument or agent of the United States, and conferred upon defendant the same powers and clothed defendant with the same privileges and immunities which it conferred upon and clothed the Atlantic and Pacific Railroad Company with, except that the said defendant was to construct only that portion of said railroad between the Colorado river and the city and county of San Francisco.

21

VIII.

Acceptance of the conditions.

Said Atlantic and Pacific Railroad Company organized under said act and obtained *bona fide* subscriptions to the stock of said company to the amount of one million dollars, with ten per centum paid within two years after the passage and approval of said act of Congress, and said company and defendant, immediately after the passage of said act, accepted the terms and conditions thereof and have duly complied therewith.

IX.

Roads constructed under said act.

Said Atlantic and Pacific Company has fully completed the whole of said road from Springfield to the Colorado river, and defendant has constructed said road as aforesaid to Mojava, with the exception hereinbefore set out.

X.

Act of Congress of March 3d, 1871—Texas Pacific act.

On the 3d day of March, 1871, the Government of the United States undertook to construct or cause to be constructed a line of railroad from Marshall, in the State of Texas, to San Diego, in the State of California, and from said line of road at the Colorado
22 river to construct or cause to be constructed a line of railroad which would connect the road from Marshall to San Diego with the line of road provided for in the act of Congress of July 27th, 1866, hereinbefore referred to, and by means of said connecting road to connect the road from Marshall to San Diego with the city of San Francisco, and to that end Congress passed an act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3d, 1870, and subsequently, on the 2d day of May, 1872, passed an act entitled "An act supplementary to an act entitled An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3d, 1871. To said acts defendant here refers by title and makes them part of this answer. (See vol. 16, U. S. Statutes at Large, 573; vol. 17, *id.*, 59.)

XI.

Provisions of said acts accepted by the Texas Pacific Railroad Company and by defendant—Their work thereunder.

Immediately after the passage of said act of March, 1871, the Texas Pacific Railroad Company was organized in pursuance
23 thereof, and it and defendant accepted all the terms and conditions of each of said acts of 1871 and 1872, and have fully and in every respect complied therewith and under them, and in compliance with the spirit and intent of said acts have completed the roads mentioned in the third subdivision of this complaint.

XII.

Intent of Congress in passing the acts of 1871 and 1872.

The purpose of Congress in passing said acts was to insure the transportation of the mails, troops, munitions of war, supplies, and stores of the United States, and to that end Congress expressly declared in said acts that no act of said companies, or either of them, nor any law of any State or Territory should ever impede, delay, or prevent said companies, or either of them, from performing their obligations to the United States in that regard.

XIII.

The State of California confirms and vests in the Southern Pacific Railroad Company the rights, privileges, franchises, power,
24 an- authority granted to or vested in said company by the several acts of Congress.

On the 4th day of April, 1870, the Legislature of the State of California passed an act entitled "An act to aid in giving effect to an act of Congress relative to the Southern Pacific Railroad Company." By the terms of said act and to enable said company to comply with the act of Congress of July 27th, 1866, hereinbefore pleaded, and all other acts of Congress then in force or which might thereafter be enacted, it was provided that the right to construct, maintain, and operate, by steam or other power, the said railroad mentioned in said acts of Congress, and all the rights, privileges, franchises, power, and authority conferred upon or granted to or vested in said company by the said acts of Congress, and any acts of Congress which might thereafter be enacted should be confirmed and vested in the defendant. Said act now is, and ever since said 4th day of April, 1870, has been, in full force and effect. (Statutes 1870, p. 883.)

25 XIV.

Indebtedness of defendant secured by mortgage.

On the first day of April, 1875, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, in

large sums of money advanced to construct and equip the railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said first day of April, 1875, executed and delivered a mortgage upon said Southern Pacific railroad, its franchises, and all rolling-stock and appurtenances, and upon a large number of tracts of land, aggregating over eleven million of acres, situated in different counties in the State of California, which said tracts of land then were, and ever since have been, the property of defendant. Said indebtedness amounts to the sum of forty-six million of dollars, and no part thereof has ever been paid except the accruing interest, and the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been and still is secured by said mortgage, a copy of which, with the endorsements thereon, is hereunto annexed and made a part hereof, marked Exhibit "A."

XV.

26 Mortgage lands—Mode and manner of assessment—Payment of taxes.

The lands mentioned in the preceding subdivision are not, and never have been, in any way connected with the railroad business of the defendant. They are agricultural and grazing lands, held, owned, and used for farming and grazing purposes, and are situated as follows in the counties of the State of California, and are distributed in the respective counties in the following quantities: In Santa Clara county, 3,138 acres; San Benito county, 1,879 acres; Monterey county, 1,879 acres; Stanislaus county, 32,242 acres; Merced county, 20,655 acres; Fresno county, 18,789 acres; Tulare county, 260,315 acres; Kern county, 168,096 acres; Los Angeles county, 38,033 acres; San Bernardino county, 30,686 acres; San Diego county, 5,787 acres.

Said lands and all of them, for each of the years 1880, 1881, 1882, and 1883, were assessed by the assessors of the respective counties in which they are situated at their full cash value, and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby. On the contrary, the laws of the State of California under which said assessors
27 acted in making said assessments prohibited any deduction from said values on account either of the mortgages or the indebtedness secured thereby. In each of said years the defendant paid in full, at the time the same became payable, all the taxes levied upon said lands, amounting in the aggregate, for State, county, and municipal purposes, to $112,947.40. The laws of the State of California, then and ever since in force, provide that in the assessment and valuation of lands of like character and situation, and in every respect similar both in quality and use, not owned by railroad or other quasi-public corporations, a mortgage thereon by which a debt is secured shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and that in the assessment and valuation of such property for the purposes

of taxation the value of said mortgages shall be deducted therefrom, and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the *in the* performance of his duties and to enable him to make the deductions aforesaid, the laws of
28 the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages by which any debt is secured remaining unsatisfied on the records of his office at 12 o'clock meridian, on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county it shall be the duty of the assessor to transmit to the State board of equalization all information relating thereto, and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county mentioned as affected in said instrument a statement of valuation assessment to be levied against said instrument in such county. (Political Code, sect. 3678.) In the matter of the valuation of its said lands for the purposes of taxation the defendant is, and ever has been, deprived of all the benefits of the said laws which provide for the deduction of indebtedness secured by
29 mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California and the action of assessors in pursuance thereof, while all natural persons and all corporations, not quasi-public, within the State of California, are entitled to receive, and do receive, the full benefit of said laws and the deduction required to be made thereunder.

XVI.

Assessment by State board of equalization.

On the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment, for the purposes of taxation, for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-
30 stock or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California as amended March 9th, 1883, except depots, station

shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed, as provided in said section, by local assessors.

XVII.

State board pretended to assess the whole of said property to defendant.

The State board of equalization in making the said pretended assessment pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, as prescribed in said section 3665, without deducting
31 therefrom the value of the mortgage or any part thereof given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

XVIII.

State board did not treat said mortgage as an interest in the property.

In making said pretended assessment the said State board of equalization did not deem or treat said mortgage as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgage thereon.

XIX.

Authority exercised by State board violates provisions of Fourteenth Amendment.

Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State, and to such boards the owners of all property, except as above stated, have the right
32 and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California and the laws in pursuance thereof this right and privilege, or any right or privilege, to be heard in relation to assessments is denied to defendant in respect to the property in question; all of which defendant avers is contrary to the provision of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

XX.

Further violation of the Fourteenth Amendment.

The power conferred upon the State board of equalization by sec-

tion ten of article XIII of the constitution of California violates the provision of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property without due process of law, for that said section, as to such power, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power, and does not pro-
33 vide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights, and, hence, under and by said provision of the constitution of the State of California, the liability of owners of such property to taxation and the amount thereof may be fixed without notice to them or an opportunity to be heard.

XXI.

Further discrimination.

The provision of section four of the constitution of the State of California, providing for the assessment of the property of railroad and other quasi-public corporations, is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States in that it discriminates against such corporations in this: that whereas, under said section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations not quasi-public has a mortgage, lien, or incumbrance thereon they are not liable to assessment or taxation upon such property, but only upon the value of their interest in such property over and above the value of such mortgage, lien, or incumbrance, whereas in the case of the property of railroad and other quasi-public corporations no such allowance or deduction is
34 made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property, and also in this: that while the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, [and] rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations or by private corporations or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not quasi-public, and denies such deduction when the property is owned by railroad or other quasi-public corporations.

XXII.

Section 10 of article XIII of said constitution of California provides that all property except the franchise, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county in the State shall be assessed in the county, city, city and
35 county, town, township, or district in which it is situated in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

The assessors of the several counties in the State of California have, as the defendant is informed and believes, and so avers, in each year since the adoption of said constitution, assessed all moneys, credits, bonds and stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership, situated in their said counties, and all dues and credits held, owned, or in the possession of persons resident in said county, to such persons.

Said assessors for each of said years have assessed to the owners and holders thereof, in their respective counties, the indebtedness of the defendant secured by the mortgage herein mentioned, but never have, nor does the law permit them so to do, made any deduction from the assessment of any of the property of this defendant on account of the assessments made as aforesaid to the holders of such indebtedness.

36

XXIII.

Further discrimination.

All owners of railroad property operated in more than one county, by virtue of said section ten of article XIII, are denied any protection from the laws of the State of California, which—

(*a*) Require that property shall be taxed in proportion to its value.

(*b*) Require such proportions to be ascertained by a general law.

(*c*) Require that before liability be fixed an opportunity to be heard must be given.

(*d*) Give an appeal from the assessor to board of equalization.

(*e*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the *situs* of the property.

(*f*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and [ever] since the adoption of the constitution of California now in force there were and are existing under the laws of said State corporations of various kinds formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State,

and that at all of said times there were and now are railroads
37 owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one county; that by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from overvaluations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

Corporations in said State of California now are, and ever have been, formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are, and ever have been, designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural per-
38 sons may lawfully associate themselves together, and there now exists in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance; building, constructing, and operating railroads, wagon-roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns; for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State,
39 a distance of twenty-seven miles, which said road now is and ever has been operated in more than one county in this State and is of the same gauge as the road of this defendant and has ever been operated for like uses and purposes.

Said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

There now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz, eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles.

Said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is
40 not, and never has been, a railroad or quasi-public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by

corporations other than railroad corporations and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XXIV.

System adopted by said board violates rules of equality.

The State board of equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and
41 greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board are blended in said pretended assessment, and there is no mode or means by which such illegal valuation can be separated from those which may be legal.

Defendant, upon its information and belief, avers that the said State board of equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of article XIII of the constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. The system so adopted was applied by the said board in making said pretended assessment of said property
41½ and in making the assessment of all property in the State over which the pretended authority of said board extended.

Said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. Said system relative to the rolling-stock of railroads was to value the same at sixty per cent. above its actual cost when new, and to value such rolling-stock at double its actual value. Said system relative to the franchise was to value it at $2,000.00 per mile, when the actual value, as the board well knew, of said franchise as an entirety did not exceed twenty-five dollars Said system as to the valuation of other property to be assessed by the said board was to value it at double its actual value. Said system was by the said board adopted and was by it applied in making all assessments made by it, with the intent and purpose wrongfully and unlawfully to cause the owners of prop-

erty assessed by it to pay double the rate of State and county taxes paid by the owners of property assessed by local assessors.

42 And defendant avers, upon its information and belief, that the said board applied the said system in making the pretended assessment against the property upon which the taxes mentioned in the complaint are based; and defendant, upon its information and belief, avers that the said State board of equalization in making said pretended assessment did not value any of said property at its actual value, but did, intentionally and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value; and defendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State and by the said State board, except in the exercise of the power conferred by section 10, article XIII, of the State constitution for said fiscal year, and that all property, save that assessed by the said State board under said section, has been valued and assessed at one-third less than its actual value, and that the taxes have been collected on valuations so made.

XXV.

Defendant's franchise a Federal one.

43 And defendant, upon its information and belief, avers that under and by virtue of the said several acts of Congress defendant became, and ever since has been, a Federal co-poration, and has held its franchise and exercised all its corporate powers under the Government of the United States.

XXVI.

Corporate powers in part derived from acts of Congress.

And defendant, upon its information and belief, avers that if, by virtue of the several acts of Congress herein referred to, it did not b-come a Federal corporation, yet it holds under the Government of the United States all the corporative powers and franchises granted to it by the said several acts of Congress as the trustee of the said Government and for the governmental uses and purposes specified in said acts.

XXVIII.

That the franchise of defendant is not subject to State taxation.

Under and by virtue of the said several acts of Congress hereinbefore referred to the defendant was, by the Government of the United States, selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the

44 transportation of its armies and military stores, and for such other purposes as said Government might, in the execution

of its powers, desire to use the same. The Government of the United States has never given to the State of California the right to lay any tax upon the franchise, existence, or operations of defendant. Such a tax would hinder and impede the lawful operations of the Government of the United States, would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of the said several acts of Congress.

XXVIII.

Whole franchise assessed.

Said pretended assessment made by the State board of equalization is upon all of the franchises of defendant, and the said board, in valuing the same, included the value of all the franchises and corporate powers held and exercised *fy* defendant under said acts of Congress.

XXIX.

Tax upon the franchise blended with tax upon other property.

The State board of equalization in making said pre-
45 tended assessment included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor upon any assessment-roll or delinquent list of said county, but such value is in said pretended apportionment and upon the assessment-roll and delinquent list of said county blended with the values affixed to the roadway, road-bed, etc., and cannot on either be distinguished or separated from such other values, and the tax upon said franchise is in like manner blended with and cannot be separated from the tax on said roadway, road-bed, etc.

XXX.

Valuation excessive.

Neither the franchise, roadway, road-bed, rails, -or rolling-stock were assessed by the State board of equalization in said pretended assessment at their actual value, or in proportion to their value, but were wilfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess of and out
46 of proportion to the rate at which all other property in said State is valued for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

XXII.

Sole authority upon which tax is based.

Said pretended assessment is the only assessment of said property, and the pretended tax for non-payment of which this action is brought is founded upon said pretended assessment and upon no other assessment.

XXXII.

State tax void.

The defendant, upon its information and belief, avers that the State board of equalization never at any time did for the said fiscal year fix or determine any rate of taxation for *the* State purposes, and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

XXXIII.

Plaintiff's causes of action based upon assessment by State board of equalization.

On the 18th day of August, 1883, the State board of equalization of the State of California, pretended to act under and by virtue of the powers conferred upon it by section ten of article XIII of
47 the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described, and known as the Southern Pacific railroad, against this defendant; that said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XXXIV.

Tender.

On the ninth day of November, 1883, the defendant, while then and now denying all liability upon said pretended assess-
48 ment, and claiming that all of the proceedings had in relation thereto were in violation of law and the rights of this defendant, tendered and offered the said plaintiff the sum of $125,806.31, in United States gold coin, in part payment of the tax claimed, with an agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights; and defendant now brings said sum into court and offers the same to plaintiff, and, if refused by plaintiff, subjects the said sum to such orders or judgments as the court may make in the premises; and defendant avers that of the sum so tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $38,766.00, and on account of the various county taxes claimed it tendered sums as follows, to wit:

For the county of Fresno the sum of $2,092.82.

For the county of Kerns the sum of $15,851.07.

For the county of Los Angeles the sum of $11,409.62.
For the county of Monterey the sum of $4,869.14.
For the county of San Benito the sum of $1,902.02.
For the county of San Bernardino the sum of $16,682.02.
For the county of San Diego the sum of $19,295.36.
For the county of San Francisco the sum of $791.16.
For the county of San Mateo the sum of $2,592.45.
For the county of Santa Clara the sum of $4,902.13.
For the county of Santa Cruz the sum of $250.95.
For the county of Tulare the sum of $6,401.57.
And ever since has and now keeps said tender good.

XXXV.

No rules or regulations.

49 Said State board of equalization has never at any time made or adopted any rule or regulation relative to the assessment or valuation of railway property of any kind, nor has it ever made or adopted any rule to govern or regulate its proceedings in the exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

Wherefore defendant prays it be hence dismissed with costs.

J. E. FOULDS,
Attorney for Defendant.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

Verification.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

J. L. Willcut, being first duly sworn, on oath says that he is an officer, to wit, the secretary, of the corporation defendant herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

J. L. WILLCUTT.

Subscribed and sworn to before me this 19th day of March, A. D. 1884.

[NOTARY'S SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

50 "EXHIBIT A."

This indenture, made and entered into this the first day of April, A. D. 1875, by and between the Southern Pacific Railroad company, a railroad corporation duly incorporated and organized under and

in pursuance of the laws of the State of California, party of the first part, and D. O. Mills and Lloyd Tevis, of the city and county of San Francisco, California, parties of the second part, witnesseth that—

Whereas the said party of the first part desires to complete the construction and equipment of its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley, and Polonio Pass to the Colorado river, at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos creek via Goshen to the junction with the first-mentioned line between Poso creek and Kern river; also from the junction near Tehachapi Pass via Los Angeles to the Texas Pacific railroad, near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, and to cancel its present bonded indebtedness for construction secured by a mortgage heretofore made and bearing date November first, eighteen hundred and seventy, and to that end intends and is about to issue its first-mortgage bonds upon said railroad and telegraph line, and its rolling-stock, fixtures, and franchises, and also upon the lands granted to it by Congress by the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July twenty-seventh, eighteen hundred and sixty-six, and the act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, not sold or otherwise disposed of prior to the execution of this mortgage, aggregating, as near as can be estimated, eleven millions of acres; and

Whereas, heretofore, to wit, on the nineteenth day of December, A. D. eighteen hundred and seventy-four, the board of directors of said company, pursuant to the statute of the State of California in such cases made and provided, at a meeting of said board at which all the members thereof were present, did, by a resolution to that effect, which was unanimously adopted and passed, determine and direct that first-mortgage bonds upon said railroad and telegraph line, its rolling-stock, fixtures, and franchises, and upon said hereinbefore-described lands, to the number of forty-eight thousand (forty-four thousand of which shall be for one thousand dollars each and four thousand of which shall be for the sum of five hundred dollars each), in seven series, to be designated by the letters of the alphabet, commencing with the letter "A" and followed by the succeeding letters in regular order to the letter "G," both inclusive, be prepared, executed, and issued by the president and secretary of said company; series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each,

numbered from seventeen thousand and one to forty-two thousand, both inclusive, and series "G" consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive; all of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually; the said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates, respectively, as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars; and

Whereas the said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further resolve that the said series "A" of said bonds should be executed and issued in substantially the following form, and that the succeeding series of said bonds should be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to wit:

The United States of America.

$1,000 in United States gold coin. In United States $1,000 gold coin.

(Vignette.)

First-mortgage bond.

No. ——-. Series "A."

The Southern Pacific Railroad Company (of California),

For value received, promises to pay one thousand dollars to Mark Hopkins, or bearer, in the city of New York, thirty years from the date hereof, with interest thereon at the rate of six per centum per annum from said date, payable semi-annually on the first day of October next ensuing and on the first day of April and October in each year thereafter, in the city of New York, on presentation and surrender of the respective coupons hereunto annexed, both principal and interest payable in United States gold coin at par, dollar for dollar.

51 This bond is one of series "A" of the first-mortgage bonds issued and to be issued by the said Southern Pacific *Pacific* Railroad Company in seven series, designated respectively by the letters of the alphabet, commencing with "A" and ending with "G," both inclusive; series "A" consisting of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series "B" to "F," both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive, and series "G" consisting of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and

one to forty-eight thousand, both inclusive; all of said bonds being payable thirty years after their respective date, with the interest at the rate of six per centum per annum, payable semi-annually.

The said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

The holder of any of such bonds is to have no preference over any other holder of any of said bonds by reason of any priority in date or the time of issuing the same or otherwise.

All of said bonds are secured by a mortgage or deed of trust bearing even date with the bonds constituting series "A," duly executed by said company to D. O. Mills and Lloyd Tevis, San Francisco, California, as trustees, upon its railroad and telegraph lines in the State of California, running from the city of San Francisco in a southerly and southeasterly direction by way of Carnadero Junction, Salinas Valley and Polonio pass to the Colorado river at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos creek via Goshen to the junction with the first-mentioned line between Posa creek and Kern river; also from the junction near Tehachapi pass via Los Angeles to the Texas Pacific railroad near Fort Yuma, and also from Los Angeles to Wilmington on San Pedro Bay, aggregating eleven hundred and fifty miles of railroad and telegraph line, with all the rolling-stock, stations, fixtures, and franchises for the permanent use thereof, and the appurtenances thereto now owned or held, or that may be hereafter required, by said company for the permanent use of said railroad and telegraph lines.

Also upon all the lands granted to said company by the Congress of the United States to aid it in the construction of said railroad and telegraph lines not sold or otherwise disposed of prior to the execution of said mortgage, aggregating, as near as can be estimated, eleven millions of acres.

In testimony whereof the Southern Pacific Railroad Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its president and secretary this first day of April, in the year of our Lord one thousand eight hundred and seventy-five.

———— ————, *President.*
———— ————, *Secretary.*

And whereas the said board of directors, at the meeting aforesaid, and in the manner and form and by the vote aforesaid, did further direct that to each of said bonds there should be attached sixty interest coupons, numbered respectively from one to sixty, inclusive, substantially in the following form, to wit:

$30.	Southern Pacific Railroad Company of California.	Series A.
Coupon.	Bond No. ——.	No. ——.
	Thirty dollars interest, due ———.	
	Payable in the city of New York in United States gold coin.	
	——— ———, *Secretary.*	

With such changes in amount in the body and in the coupon as shall be necessary to conform to the order of the board of directors aforesaid in regard to the several amounts or sums which are payable in each class of bonds; and

Whereas by an act of Congress of the United States of America approved on the twenty-seventh day of July, A. D. eighteen hundred and sixty-six, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," there was granted to the said Southern Pacific Railroad Company, party of the first part, a large body of public lands of the United States, to wit, every alternate section of public lands, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company running from the Bay of San Francisco to the southeasterly line of the State of California, being about six hundred and thirty-six miles, not sold, reserved, granted, or otherwise appropriated, and free from pre-emption, homestead, or other claims or rights at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office and such other alternate sections desig-
52 nated by odd numbers as aforesaid, and situated not more than ten miles beyond the limits of the said first alternate sections, which may be selected by said company in lieu of any of the sections aforesaid which may have been sold, granted, reserved, pre-empted, occupied as homesteads, or otherwise disposed of, or to which other rights may have attached, as provided in the act of Congress aforesaid for the purpose of aiding in the construction of the railroad and telegraph line of the said party of the first part; and

Whereas by an act of Congress of the United States of America, approved on the third day of March, eighteen hundred and seventy-one, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes," there was granted to the said Southern Pacific Railroad Company the authority to construct a line of railroad from a point near Tehichipa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, land grants, and privileges, and subject to the same limitations, restrictions, and conditions as was granted to and imposed upon the said Southern Pacific Railroad Company of California by the aforesaid act of July twenty-seventh, eighteen hundred and sixty-six, before recited, subject to the rights, present and prospective, of the Atlantic and Pacific

Railroad Company, which said last line of road is of the length of three hundred and fifty-six and seven one-hundredths miles; and

Whereas the said board of directors, at the meeting aforesaid and in the manner and form and by the vote aforesaid, did further direct that to secure the payment of said bonds a first mortgage upon said road and its rolling-stock, stations, fixtures, right of way, and franchises, and the lands aforesaid granted by said acts of Congress, not sold or otherwise disposed of or contracted to be sold, as shown by the books of said company, should be executed under the corporate seal of said company and be signed by its president and secretary, to D. O. Mills and Lloyd Tevis, both of the city and county of San Francisco, State of California, as trustees for the holders of said bonds; and

Whereas said board of directors, at the meeting aforesaid and in the manner and form and by the vote aforesaid, did further direct that a sinking fund should be created for the redemption and payment of said bonds by setting apart the sum of one hundred thousand dollars of the net income of said road in the year eighteen hundred and eighty-two and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid, in trust, to be loaned out at interest, upon good securities, or otherwise invested under the order and direction of said board of directors, or used to redeem said bonds as often as one hundred thousand dollars shall come into the sinking fund, in which case notice shall be published in one paper in the city of San Francisco and two papers in New York city, that bonds will be redeemed at a price not exceed- their par value, and inviting bids for the surrender thereof at prices to be named, not exceeding the par value of said bonds, the lowest bids less than par to be accepted, and bonds redeemed to the extent of the money in the tinking fund:

Now, therefore, this indenture witnesseth that the said Southern Pacific Railroad Company, for the better securing of the payment of the principal and interest of the said first-mortgage bonds and in consideration also of the sum of one dollar, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted bargained, sold, and aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm, unto the said parties of the second part, and to their successors duly appointed for the execution of the trusts herein set forth, the following property now or hereafter constituted, purchased, acquired, held in possession, and owned by said company, to wit: The whole of the railroad and telegraph line of the said company, running from the city of San Francisco, in the State of California, in a southerly and southeasterly direction, by way of Carnadero Junction, Salinas valley, and Polonio Pass to the Colorado river at or near the "Needles;" also from Carnadero Junction to San Benito; also from Los Gatos creek, via Goshen, to the junction with the first-mentioned line, between Poso creek and Kern river; also from the junction near Tehichipa Pass, via Los Angeles, to the Texas Pacific railroad near Fort Yuma, and also from Los Angeles to Wilmington, on San Pedro Bay, aggregating eleven hundred and fifty miles

of railroad and telegraph lines, including all the rights of way, roadway, track, and tracks, together with all the superstructures, depots, depot grounds, station-houses, watering-places, work-shops, machine-shops, machinery, side tracks, turnouts, turn-tables, weighing-scales, locomotives, tenders, cars, rolling-stock of all kinds, full equipments, fixtures, tools, and all other property which may be necessarily or ordinarily used in operating or repairing the said railroad, including all of the said property which is now or may hereafter, in whole or in part, be constructed or completed, purchased, acquired, held, or owned by the said company pertaining to said railroad, and all the corporate rights, privileges, and franchises of said company pertaining to said road, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging and appertaining, and the reversion and reversions, remainder and remainders, rents, incomes, issues, and profits thereof, with all the rights, titles, interests, estate, property, succession, claim, and demand, in law or equity, of the said party of the first part of, in, and to the same or any part and parcel thereof; to have and to hold the above granted and described premises, property, and franchises, with the appurtenances, unto the said parties of the second part, and to the survivor of them, and to their successors, duly appointed, upon trust and for the use and benefit of the person or persons, body or bodies, politic or corporate, who shall have become, or be from time to time, holders of the said "first-mortgage bonds" or any of them: Provided always, and these presents are upon the express condition, That if the said party of the first part, or its successors, shall well and truly pay or cause or procure to be paid unto the holders, from time to time, of said bonds, and each and every one of them, the said sums of money secured to be paid by the said bonds, and the interest coupons attached thereto, at the places and times and in the manner set forth in the said bonds, according to the true intent and meaning thereof, then these presents and all the property, estate, right, franchises, and privileges herein and hereby granted and conveyed shall cease, determine, and be void, but if default shall be made in the payment of the said sums of money specified in said bonds or in the pay-
53 ment of said interest coupons, or either of them, or any part thereof, and if the same shall remain unpaid for the period of six months from and after the time when the same should have been paid, according to the terms of said bonds, then the said parties of the second part, or either of them, upon the refusal of the other, or their successors in said trust, by themselves or their agents or servants in that behalf, may, upon request of the holder or holders of not less than one-fourth of said bonds, on which the interest or principal shall so be and have so remained in default as aforesaid, enter into and upon and take possession of all, or in their or his discretion, any part of the said premises and property hereinbefore described, and work and operate the said railroad and receive the income, receipts, and profits thereof, and out of the same pay—first, the expense of running and operating the same, including therein such reasonable compensation as they or he may allow to the several persons employed or engaged in the running and superintendence of the same,

and a reasonable compensation to the parties of the second part, or their successors, or such of them as shall act in the premises, for their or his care, diligence, and responsibility in the premises; second, the expenses of keeping the said road, the appurtenances, the locomotives, and the rolling-stock thereof in good and sufficient repair, to prevent deterioration in the value thereof, and all other reasonable and proper charges and expenses of the care and management thereof; and, third, pay, as far as the same will suffice, all interest and principal, if any, which may be due on said bonds; and in case of any deficiency to apply said receipts, after the payment of all said charges and expenses, to the payment thereof, ratably, without preference of any kind, or the said parties of the second part may in such case foreclose this mortgage, and sell and dispose of, according to law, all the rights, property, privileges, franchises, real and personal, with the appurtenances herein and hereby granted, or so much thereof as may be necessary, and out of the money arising from such sale pay—first, the costs and charges and expenses of the foreclosure and sale, including therein reasonable counsel fees for conducting said proceedings, to be allowed and fixed by the court, but not exceeding thirty thousand dollars; second, any expenses, costs, and charges of the execution of the trust previously incurred and remaining unpaid; third, a reasonable compensation to the trustees, or one of them, who may act, for their or his care, trouble, and service in completing the execution of his trust and the distribution of the proceeds of sale, to be fixed by the court, but not exceeding twenty thousand dollars; and, fourth, to distribute residue of said proceeds among the holders of said bonds in proportion to their several interests until all have been paid in full, principal and accrued interest.

And the said party of the first part hereby covenants and agrees that if at any time any lands now used for depot or shop purposes or right of way or water, or any lands not now used, but which may be hereafter used for such purposes shall, for any cause, cease to be needed or used by said party of the first part for such purposes, the said parties of the second part may sell the same at the price to be agreed upon by the parties of the first and second parts, and apply the money realized from such sale or sales to the redemption of said bonds in the manner hereinafter provided in the case of money realized from the sale of lands granted by the United States to the said party of the first part.

And the said party of the first part hereby agrees and covenants to and with the said parties of the second part, and their successors in said trust, that it will pay all ordinary and extraordinary taxes, assessments, and other public burdens and charges which shall or may be imposed upon the property herein described and hereby mortgaged, and every part thereof, and the said parties of the second part, the survivor of them, or their successors in said trust, or any one or more of the holders of said bonds may in case of default of the said party of the first part in this behalf pay and discharge the same and any other lien or incumbrance upon said property which may in any way, either in law or equity, be or become in effect a charge

or lien thereon prior to these presents, or to which this mortgage may be subject or subordinate, and for all payments thus made the parties so making the same shall be allowed interest thereon at the rate of seven per centum per annum, and such payments, with the interest thereon, shall be and are hereby secured to them by these presents, and declared to be payable and collectible in the same sort of currency or money wherein they shall have been paid, and the same shall be payable by said party of the first part to said parties of the second part upon demand in trust for the party or parties paying the same, and may be paid out of the proceeds of the sale of said property and franchises hereinbefore provided.

And the said party of the first part hereby further covenants and agrees to and with the said parties of the second part, and their successors in said trust, that they will at any and all times hereafter, upon the request of the said parties of the second part, execute, acknowledge, and deliver to the said parties of the second part all and every such further, necessary, and reasonable conveyances and assurances of the said premises or any part thereof as may by the parties of the second part, or the survivor of them, or his or their successors in the trust hereby created be reasonably advised or required for more fully carrying into effect the objects of this conveyance, and the said parties of the second part, and their successors in said trust, shall be entitled to receive a just and proper compensation for all services rendered by them in the discharge of said trust, and the same shall be deemed to be secured hereby.

And it is hereby stipulated and agreed that the said parties of the second part, and their successors in said trust, shall not be responsible for the acts or omissions of any agent or agents employed by him or them in any manner in and about the execution of the trust hereby created when such agent or agents are selected with reasonable discretion, or with the approbation or with the knowledge and without the express disapprobation of said party of the first part, nor shall either of the said parties of the second part be responsible for any act or omission of the other in the execution of said trust.

And, therefore, this indenture further witnesseth that the said party of the first part, for the purpose of securing the payment of the sums of money mentioned in said bonds, and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed, and confirmed, and by these presents does grant, bargain, sell, release, enfeoff, convey, and confirm, unto the said parties of the second part, as trustees, and to their successors and survivor and their assigns forever.

All and singular the said several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim, and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof, which the said party of the first part now has, holds, owns, or is entitled
54 to, or hereafter may or shall acquire, have, hold, own, or be

or become entitled to by force or virtue of the said acts of Congress, saving, excepting, and reserving all parts and parcels of said lands which have been sold or contracted to be sold or disposed of heretofore, or which are or shall be included in the right of way of the said railroads and telegraph lines of the said company, as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof.

To have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part and their successors and survivor and their assigns forever, as trustees for the uses and purposes and upon the trusts, terms, conditions and agreements in this indenture set forth and declared.

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof, with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title, and interest in any and all property hereby conveyed to the parties of the second part not then disposed of under the powers hereby conferred shall revert to and vest in the said party of the first part.

This indenture further witnesseth that these presents and the said bonds are made, executed, and delivered upon the trusts, terms, conditions, and agreements following—that is to say: That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second parts and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided until entry or foreclosure by the trustees, as hereinafter provided, but no title to any tract of land contracted to be sold by the said party of the first part shall be given until the whole of the purchase-money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds, or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor, the prices being nevertheless, at all times, subject to revision and alteration by the said parties;

and the party of the first part may reserve from sale any lands necessary for depot grounds or other purposes connected with the construction or operation of the said railroad or telegraph.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second parts to the purchaser in fee-simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance for or on account of said bonds or any other debt or obligation of the said party of the first part:

Provided, That for the sake of convenience in making said conveyances the said trustees shall have power to act by attorney, duly nominated and appointed by them, jointly, by letter of attorney, which shall be duly acknowledged and recorded in each and all of the counties in which said lands or any part thereof are situated, and all deeds made in their names by such attorney shall have the same force and effect as if made by them in person:

Provided further, That the attorney so appointed shall be a resident of the city of San Francisco, in the State of California, and shall reside within convenient reach of the party of the first part.

The said trustees shall and will cancel and discharge each and every bond and the coupons thereon and all overdue coupons which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signature of the president and secretary, and drawing lines across each of the interest coupons, on receipt thereof; and all bonds and coupons received in payment for lands as aforesaid shall, when so cancelled, be delivered to the said party of the first part.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of the bonds provided for in and issued in conformity to the terms of this indenture.

And for such purpose all such avails shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so long as purchases thereof can be made at par, and whenever such bonds cannot be purchased at that rate said trustees shall advertise for proposals to sell such bonds to them in two newspapers in the city of New York and one newspaper published in the city of San Francisco, and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered.

The said party of the first part does hereby covenant and agree to pay to the holders of said bonds, respectively, the said principal sums of money therein mentioned and the interest thereof as aforesaid.

If any default shall be made in the payment, either of principal or interest, on any of said bonds for six months after demand at the place of payment when the same shall become due, then the said trustees may, on being requested by the holders of at least one hun-

dred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed and foreclose this mortgage, and may sell at public auction as much of said lands as may
55 be necessary to discharge all arrears of such interest and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure, and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal, the principal sum of all bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all the lands above by these presents mortgaged or conveyed, foreclose this mortgage, and sell at public auction all said lands or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York and in one published in each of the cities of San Francisco, Sacramento, Los Angeles, and San Diego; and they shall apply the proceeds thereof, after deducting the costs, charges, and expenses of such last-mentioned entry, foreclosure, and sale, to the payment of all said bonds then outstanding, and the interest accrued thereon, rendering the surplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure or at any such public auction, the said trustees shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part in and to the property so sold to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

If after any such entry shall be made or any such foreclosure proceedings shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees and pay all the costs, charges, and expenses incurred in such entry and foreclosure and the proceedings thereon, then and in every such case the said trustees shall discontinue their proceedings thereon and restore to the said party of the first part all of such lands, to be held subject to the above conveyance and mortgage, and subject to all the provisions, terms, and conditions of these presents in like manner as if such entry had not been made nor such foreclosure proceedings commenced. In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustee shall, while said vacancy or absence exists, have all the rights, exercise all the powers, and discharge all the duties devolving on the said trustee by said instrument. But as soon as it conveniently may be done such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and if approved by them the person so nominated and approved immediately shall become a trustee under this instrument. If said nomination is not approved another per-

son shall be nominated by said remaining trustee and in like manner submitted for approval, and so on till three nominations shall have been made. But if three successive nominations shall be made and none of them shall be approved by said board said vacancy shall be filled by a committee of three persons selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument. And the person regularly appointed a trustee to fill a vacancy in either of the forms above specified shall, from and after his said appointment and his acceptance of the appointment, become vested with the same estates, powers, rights, and interests and charged with the same duties and responsibilities as if he had been one of the original trustees, parties of the second part, named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with him or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee by a proper deed in writing to that effect and such resignation shall be accepted by the said party of the first part, then, and in every such case, the place of such resigning trustee thereupon shall become and be vacant.

Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created, shall have been fully paid or satisfied, the said trustees shall reconvey to the said party of the first part all and singular the said lands then in the hands of the said trustees, and not before that time sold or disposed of in the execution of the trust hereby created. In case the said trustees shall at any time have any trust moneys on hand received from the sale of the lands hereby conveyed which will not be required to meet any immediate liabilities of the company, to which said moneys are by these presents devoted, the said moneys shall be loaned on interest, or deposited on interest, with some bank or trust company in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the trustees or such one of them as they may designate. All of the books of the said company and of the trustees relating to the lands hereby conveyed shall be mutually open to the inspection of said company and said trustees. It shall be the duty of the said trustees to certify and deliver to the said party of the first part the said bonds as the same from time to time shall be demanded, issued, or used by the said party of the first part.

And it is hereby mutually agreed by and between the parties hereto that the said parties of the second part and their survivor and successors, and their heirs, executors, and administrators, shall not be answerable for the acts, omissions, or defaults of each other, nor for anything short of their own gross negligence or wilful misfeasance.

It is hereby declared by the parties to this indenture that all the

provisions of said acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument; and the said provisions in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part are to be observed and strictly and faithfully carried out and fulfilled.

And the said party of the first part covenants and agrees to and with the said parties of the second part that the said party of the first part shall and will at any and all times hereafter and from time to time execute, acknowledge, and deliver, under its corporate seal, to the said parties of the second part and their survivors and successors all such other or further assurances, deeds, mortgages, obligations, transfers, indentures, and instruments in writing, and shall and will do and perform all such other or further acts or things as shall or may be necessary or proper, or as their counsel learned in the law shall deem necessary, proper, or expedient for the better or more effectually securing upon the above conveyed
56 and mortgaged premises the payment of the said bonds so to be issued and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects, and purposes of these presents. And the said parties of the second part hereby accept the trust created and declared by this instrument and agree to discharge the same pursuant to the provisions in that behalf herein contained.

In witness whereof the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary and sealed with its corporate seal, and the above parties of the second part have hereunto set their hands and seal the day and year first above written.

CHARLES CROCKER,
President Southern Pacific Railroad Company.

[SEAL.]

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

We accept the trust declared in the foregoing instrument.

D. O. MILLS, [SEAL.]
LLOYD TEVIS, [SEAL.]
Trustees.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

On this third (3rd) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared Charles Crocker, known to me to be the president of the Southern Pacific Railroad Company, and J. L. Willcut, known to me to be the secretary of the Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal this 3rd day of July, A. D. 1875.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

I, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, residing in the city of San Francisco, duly commissioned and sworn, do certify that on the sixth (6th) day of July, in the year one thousand eight hundred and seventy-five (1875), personally appeared before me, in the city and county of San Francisco, State of California aforesaid, Charles Crocker, president of the "Southern Pacific Railroad Company," and J. L. Willcut, secretary of the "Southern Pacific Railroad Company," who are both personally known to me to be the said officers of the said "Southern Pacific Railroad Company," respectively, and the individuals described in and who have executed the foregoing instrument as such officers of said company, and they each, severally and personally, then and there acknowledged to me that they executed the said instrument as the free act and deed of the said "Southern Pacific Railroad Company" freely and voluntarily, and for the uses and purposes therein mentioned; and the said J. L. Willcutt, with whom I am personally acquainted, being by me duly sworn, did depose and say that he resides in the city and county of San Francisco, State of California; that he is and was secretary of the "Southern Pacific Railroad Company" at the date and time he executed the foregoing instrument; that he knows the corporate seal of said company, and is and was at the date of said instrument the legal custodian of said seal; that the seal affixed to the foregoing instrument was and is such corporate seal, and was by him so affixed by order of the board of directors of the said "Southern Pacific Railroad Company;" that he signed his name thereto as as Secretary of said company by the like order; and the said J. L. Willcutt further said that he was and is acquainted with Charles Crocker, and knows that said Charles Crocker is and was president of the "Southern Pacific Railroad Company" at the date of said instrument; that the signature of the said Charles Crocker subscribed to said instrument is in the genuine handwriting of the said Charles Crocker, and was thereto by him subscribed by the like order of the board of directors of said company, and in the presence of him, the said deponent.

In witness wereof I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, State of California, the 6th day of July, A. D. 1875.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this seventh (7th) day of July, in the year one thousand eight hundred and seventy-five (1875), before me, Charles J. Torbert, a notary public in and for the said city and county of San Francisco, State of California, duly commissioned and qualified, personally appeared D. O. Mills and Lloyd Tevis, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, State of California, this 7th day of July, A. D. 1875.

[SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County San Francisco, State California.

57 Filed for record at the request of D. W. Parkhurst and recorded in office of the county recorder of San Mateo county, July 8th, 1875, at 5 p. m., in liber 11 of mortgages, at page 2, and following.

Witness my hand and seal of office.

[SEAL.] GEO. H. RICE,
County Recorder,
By W. R. THOMAS, *Deputy.*

Paid $22.50

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 9 o'clock and 26 minutes a. m., and recorded in book 15 of mortgages, at page 156 *et seq.*, records of the county of Santa Clara, in the State of California.

Witness my hand and seal of office.

[SEAL.] W. J. COLAHAN,
County Recorder,
By F. J. SAXE, *Dep't.*

Paid $15.

Filed for record at the request of D. W. Parkhurst, July 9th, A. D. 1875, at 8 o'clock and 53 minutes p. m., and recorded in book 1 of mortgages, at page 586 and following, records of San Benito county, in the State of California.

Witness my hand and seal of office.

[SEAL.] H. M. HAYES,
Co. Recorder.

Fees, $15, paid.

Filed for record at the request of D. W. Parkhurst, July 10th, A. D. 1875, at 8 o'clock and 10 minutes p. m., and recorded in volume 17, page 529 and following pages, of the mortgage records of the county of Santa Cruz, in the State of California.

Witness my hand and seal of said county recorder.

[SEAL.] H. E. MAKENNEY,
County Recorder in and for Santa Cruz County.

Paid $15.00.

Filed for record at the request of D. W. Parkhurst, July 12th, A. D. 1875, at 9 o'clock and 55 minutes a. m., and recorded in book 1 of mortgages, page 183 and following, records of the county of Monterey, in the State of California.

Witness my hand and seal of office.

[SEAL.] HERBERT MILLS,
County Recorder.

Fees, $15, p'd.

Filed for record at the request of D. W. Parkhurst, July 13th, A. D. 1875, at six o'clock and 25 minutes p. m., and recorded in book "C" of mortgages, page 540 *et seq.*, records of the county of San Luis Obispo, in the State of California.

Witness my hand and seal of office, county recorder.

[SEAL.] CHAS. W. DANA,
County Recorder.

Fees, $15.

Filed for record at the request of D. W. Parkhurst, July 14th, A. D. 1875, at 2 o'clock and 20 minutes p. m., and recorded in book "F" of mortgages, page 164 and following, records of the county of Santa Barbara, in the State of California.

Witness my hand and seal of office of county recorder.

[SEAL.] H. P. STONE,
County Recorder,
By J. O. B. WENTLING, *Deputy.*

Fees, $15, p'd.

Filed for record at the request of D. W. Parkhurst, July 16th, A. D. 1875, at 8 o'clock and 40 minutes a. m., and recorded in book 15 of mortgages, page 600 *et seq.*, records of the county of Los Angeles, in the State of California.

Witness my hand and seal of office [of] county recorder.

[SEAL.] J. W. GILLETTE,
County Recorder,
By D. S. LOVEJOY, *Deputy.*

Fees, $15, p'd.

Filed for record at the request of D. W. Parkhurst, July 19th, A. D. 1875, at nine o'clock and 15 minutes a. m., and recorded in book volume 2 of mortgages, page 217 and following, records of the county of Kern, in the State of California.

Witness my hand and seal of office.

[SEAL.] F. W. CRAIG,
County Recorder.

Fees, $15, p'd.

58 Filed for record at the request of D. W. Parkhurst, Esq., July 20th, A. D. 1875, at 8 o'clock and 15 minutes p. m., and recorded in book D of mortages, pp. 310 *et seq.*, records of the county of Fresno, in the State of California.

Witness my hand and seal of office of county recorder,
[SEAL.] A. M. CLARK,
County Recorder,
By C. L. WAINWRIGHT, *Deputy*.

Pd. $15.

Filed for record at request of D. W. Parkhurst, July 21st, A. D. 1875, at 10 o'clock and 30 minutes a. m., and recorded in book "K" of mortgages, page 1 *et seq.*, records of the county of Tulare, in the State of California.

Witness my hand and seal of office of county recorder.
[SEAL.] J. E. DENNY, *Recorder*,
By JOHN G. KNOX, *Deputy*.

Pd. $15.

Filed for record at the request of D. W. Parkhurst, July 23d, A. D. 1875, at 10 o'clock and 40 minutes p. m., and recorded in book "D" of mortgages, 544 *et seq.*, records of the county of San Bernardino, in the State of California.

Witness my hand and seal of office of county recorder.
[SEAL.] SYDNEY P. WAITE,
County Recorder,
By R. S. SWING, *Deputy*.

Pd. $15.00.

Filed for record at the request of D. W. Parkhurst, July 26th, A. D. 1875, at 10 o'clock and 20 minutes a. m., and recorded in book No. 7 of mortgages, page 103 *et seq.*, records of the county of San Diego, in the State of California.

Witness my hand and seal of office of county recorder.
[SEAL.] A. S. GRANT,
County Recorder,
By E. G. HAIGHT, *Deputy*.

Fees, $15.

Filed for record at the request of D. W. Parkhurst, July 28th, A. D. 1875, at 24 minutes past 4 p. m., and recorded in book No. 2 of mortgages, page 46 *et seq.*, records of the county of Ventura, State of California.

Witness my hand and seal of office of county recorder.
[SEAL.] JOHN T. STOW,
County Recorder.

Fees, $18.

Recorded at request of D. W. Parkhurst, August 3rd, A. D. 1875, at 1 p. m., in liber 443 of mortgages, page 309, in the office of the county recorder of the city and county of San Francisco, State of California.

[SEAL.] O. H. FRANK,
County Recorder.

Recorded at request of Wells, Fargo & Co., August 20, 1880, at 20 min. past 9 a. m., in book 1 of mortgages, page 557 *et seq.*, records of Merced county.

[SEAL.] E. J. HAMILTON,
County Recorder,
By M. H. WALSH, *Deputy*.

$15.

Recorded at request of Wells, Fargo & Co., August 23d, A. D. 1880, at 5 min. past 9 o'clock a. m., in vol. 15 of mortgages, at pages 139 *et seq.*, records of Stanislaus county.

[SEAL.] JOHN McCOY, *Recorder*.

$15, paid.

Recorded at request of J. L. Willcutt, September 6th, 1880, at 30 min. past 10 o'clock a. m., in liber 624 of mortgages, page 305, in the office of the county recorder of the city and county of San Francisco, State of California.

[SEAL.] W. K. DIETRICH,
County Recorder,
Per RICHARD BLAUVELT, *Deputy*.

59 Endorsed: Due service of the within answer admitted this 22nd day of March, 1884. James A. Waymire and Wm. T. Baggett, attorneys for plaintiff. Filed March 22nd, 1884, 2¼ p. m. William T. Sesnon, clerk, by J. D. Ruggles, dep. clerk.

60 *Petition for Removal of Cause.*

In the Superior Court, City and County of San Francisco, State of California. Dep't 3.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 11835.

To the honorable the superior court in and for the city and county of San Francisco, State of California:

Your petitioner, The Southern Pacific Railroad Company, respectfully shows:

That your petitioner is the sole defendant in the above-entitled action now pending in this honorable court.

That said action was brought on the 23rd day of February, 1884, the complaint therein having been duly filed on said date.

That the defendant has on this day, and before the filing of this petition, appeared in said action and filed an answer to the complaint of plaintiff.

That no term of this court has been held since this action, and this petition is filed before the term at which the cause could be first tried.

That no trial of said action has been had, and this petition is filed before the trial thereof.

61. That said action is a suit of a cival nature at law and arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars.

That said action is brought by the plaintiff to recover from the defendant, on account of taxes claimed by the plaintiff to be due and payable from the defendant for State and county purposes, as will more fully appear by a reference to the plaintiff's complaint on file herein.

That the assessment described in the complaint and answer, and which the plaintiff in this action claims to be due and payable, is an assessment which the State board of equalization of the State of California pretended to make under and by virtue of the authority conferred upon the board by section 10 of article XIII of the State constitution.

That the defendant claims in this action that said provisions of the constitution of the State of California and the authority thereby conferred upon said State board of equalization violate the provisions of the Fourteenth Amendment to the Constitution of the United States in this: that its effect is to deprive the defendant of its property without due process of law, and that under it the defendant is denied any protection from the general laws of the

62 State of California, which—

First. Require that property shall be taxed in proportion to its value.

Second. Require such proportions to be ascertained by a general law.

Third. Require, before the liability is fixed, that the right to be heard must be given.

Fourth. Which give an appeal from the assessor to another tribunal.

Fifth. Require the assessment to be made in the county and prevent its being made in localities distant from the *situs* of the property.

Sixth. Prescribe the mode and manner of the assessment; and,

Seventh. Which allow deductions from indebtedness secured by mortgage.

Eighth. Which require property to be assessed at its actual value.

That in the assessment and apportionment described and mentioned in the answer the franchise of the defendant and the whole thereof is included in the valuation and so blended with the other assessments and valuations that it cannot be distinguished therefrom; and defendant claims in this action that under and by virtue of the acts of Congress of July 27th, 1866, and March 3d, 1871 (which acts are referred to in said answer), the defendant was, by the Government of the United States, selected as as an instrument and

63 means of that Government to carry into execution the said several acts of Congress; and defendant further claims in this action that under and by virtue of said several acts of Congress the State has no power to impose a tax upon the franchise or operations of de-

fendant, and that such tax violates the provisions of said several acts of Congress.

That prior to the 1st day of January, 1884, the defendant was and now is indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, and others of them then and now citizens and *bona fide* residents of other States of the Union, in large sums, for moneys advanced to construct and equip its railroad described in the answer herein; that to secure the payment of such indebtedness the defendant, long prior to the said day, executed and delivered a mortgage upon its railroad and all rolling-stock and appurtenances, and upon a large number of tracts of land situated in different counties of the State of California, which said tracts of land then were and ever since have been the property of defendant; that said indebtedness exceeded and still exceeds three thousand dollars per mile of said road; that no part thereof
64 has ever been paid, except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company defendant, and has been and still is secured by said mortgage.

That the said pretended assessment made as aforesaid by said State board of equalization included the whole value of said property without any deduction therefrom; that under the constitution of the State of California, when property other than property such as is described in the complaint is assessed and valued for the purposes of taxation, it is the duty of the assessor making such valuation to deduct from the value of such property all indebtedness secured by mortgage or lien upon the property; that the supreme court of the State of California, the highest tribunal in said State, has decided that defendant (and others similarly situated) is not entitled to the protection of the Fourteenth Amendment of the Constitution of the United States, is not a means or instrument of the Federal Government; that its franchise is assessable and subject to taxation without the consent of the Federal Government, and that defendant and others similarly situated are not entitled to the reduction hereinbefore referred to; that said decision of the supreme court of
65 the State of California is in full force and is binding upon the inferior courts of the State, and especially upon this court; that the facts stated in the answer herein are true, which answer defendant refers to and makes part of this petition; that defendant is the corporation mentioned in the said several acts of Congress hereinbefore referred to, and that the railroad of defendant, which has been assessed by the State board of equalization, is the road constructed, operated, and maintained by defendant under the said several act of Congress; that the plaintiff in said action will rely upon the decision of the supreme court of the State of California, and that the construction of said several acts of Congress and of the Fourteenth Amendment to the Constitution of the United States is in this action disputed, and must necessarily be adjudged and determined herein, and that if said adjudication and determination be in favor of defendant and against that heretofore made by the su-

preme court of the State of California such adjudication and determination will be conclusive in favor of defendant upon the merits of this action; that this is a suit arising under the Constitution and laws of the United States.

That your petitioner has made and filed with this petition
66 a bond in the penal sum of five thousand dollars, with good and sufficient surety, conditioned that your petitioner shall enter in the circuit court of the United States to be held in the district of California, in the ninth circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also shall appear in said circuit court and enter special bail in said suit if special bail was originally requisite therein, and shall do all such other and further appropriate acts as by the act of Congress, approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," are requisite to be done upon removal of a suit in a circuit court of the United States from a State court; and your petitioner is ready and willing to give such other and further bonds and to do all such other acts as may be lawfully required.

Your petitioner therefore prays that this honorable court will accept this petition and said bond and proceed no further in said suit, and that said suit may be removed into the circuit court of
67 the United States in and for the district of California, in the ninth circuit, as required by statute of the United States in such cases made and provided.

And your petitioner will ever pray, etc.

J. E. FOULDS,
Attorney for Petitioner.

S. W. SANDERSON,
CREED HAYMOND,
Of Counsel.

Endorsed: Filed March 22d, 1884, 2½ o'c. p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy.

68 *Bond on Removal.*

In the Superior Court, City and County of San Francisco, State of California. Dep't 3.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), Defendant. } No. 11835.

Know all men by these presents that we, The Southern Pacific Railroad Company, as principal, and Chas. F. Crocker and A. N. Towne, as sureties, are held and firmly bound unto The People of the State of California in the sum of five thousand dollars, to be

paid to the said plaintiff; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this fifth (5) day of March, 1884.

Whereas the above-entitled action was brought, on or about the 23rd day of February, 1884, in the superior court in the county of San Francisco, State of California, and the same is now pending in said superior court, by said The People of the State of California against said Southern Pacific Railroad Company, and is removable into the circuit court of the United States in and for the district of California,
69 in the ninth circuit, under and by that certain act of Congress of the United States, approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;"

And whereas said The Southern Pacific Railroad Company has made, and is about to file herewith, its petition in said suit in said superior court in and for the county of San Francisco, State of California, for the removal of said suit into said circuit court of the United States, to be held in the said district of California, in the ninth circuit:

Now, the condition of this obligation is such that if said The Southern Pacific Railroad Company shall enter in such circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also shall there appear and enter special bail in such suit if special bail was originally requisite therein, and shall do all such other appropriate acts
70 as by the said act of Congress are required to be done upon the removal of a suit from a State court into the circuit court of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] THE SOUTHERN PACIFIC RAILROAD COMPANY,
J. L. WILLCUTT, *Secretary.*
CHAS. F. CROCKER. [SEAL.]
A. N. TOWNE. [SEAL.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Chas. F. Crocker and A. N. Towne, the sureties in the foregoing obligation, being each sworn, each for himself says that he is a resident of the State of California and a freeholder therein, and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

CHAS. F. CROCKER.
A. N. TOWNE.

Subscribed and sworn to before me this fifth (5) day of March, 1884.

[NOTARIAL SEAL.] CHAS. J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

I hereby approve of the above sureties and accept and approve the foregoing bond.

Dated ——, 1884.

——— ———,
Judge Superior Court, City and County of San Francisco.

71 Endorsed: Filed March 22d, 1884, 2½ o'c. p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

72 *Clerk's Certificate.*

I, William T. Sesnon, county clerk of the county of San Francisco, State of California, and *ex-officio* clerk of the superior court of said county, do hereby certify the foregoing to be a full, true, and correct copy of the whole of the record in the within action of The People of the State of California *vs.* The Southern Pacific Railroad Company, now on file in my office and numbered 11835.

In witness whereof I have hereunto set my hand and affixed the seal of the said superior court this 22nd day of March, 1884.

[SEAL.] WILLIAM T. SESNON,
Co. Clerk and ex-officio Clerk of Superior Court,
By J. D. RUGGLES, *Dep. Clerk.*

[Endorsed:] Filed March 24, 1884. L. S. B. Sawyer.

73 *Stipulation Waiving Trial by Jury and Submitting Cause.*

In the Circuit Court of the Ninth Judicial Circuit in and for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 3264.

It is hereby stipulated by and between the plaintiff and defendant to the above-entitled action that trial by jury is waived. And it is further stipulated that the above-entitled action shall be, and is hereby, submitted to the court for its findings and determination:

First. Upon the assessment-roll on file in the controller's office for the year 1883 relating to the assessment mentioned in the complaint herein, which roll is hereby given in evidence.

Second. Upon evidence offered by plaintiff and defendant upon the trial of the cases of "The County of Santa Clara *vs.* The
74 Southern Pacific Railroad Company," No. 3074, and "The People of the State of California *vs.* The Southern Pacific Railroad Company," No. 2846, and "The County of San Bernardino *vs.* The Southern Pacific Railway Company," No. 2757, tried and

determined in this court in the year 1883, and now pending in the Supreme Court of the United States on appeal.

Third. Upon the admission by the plaintiff that the facts stated in the second, third, fourth, fifth, seventh, eight-, ninth, tenth, eleventh, and thirteenth paragraphs of defendant's answer are true, except that the plaintiffs do not admit that the acts of Congress therein referred to, or any of the facts therein stated, give to the defendant a corporate existence under the laws of the United States or make it a Federal agency.

Fourth. Upon the admission by the plaintiff that the facts stated in paragraphs 14 and 15 of said answer are true.

Fifth. Upon the admission by the plaintiff that the facts stated in paragraphs 17 and 18 of said answer are true.

75 Seventh. Upon matters, stipulated by stipulation, entered into of this date and filed in this court, in the case of "The People of the State of California *vs.* The Central Pacific Railroad Company," No. 3263.

Eight-. Upon the admission made by the plaintiff that the tender pleaded in defendant's answer has been kept good, and that upon the order of this court heretofore made the defendant has paid to plaintiff the sum of $125,806.31, without prejudice and for the uses and purposes mentioned in said answer relating to said tender.

It is hereby stipulated that the court in making its findings in this case may, in considering the testimony given in the cases referred to in this stipulation, and in considering the matters mentioned in the stipulation hereinbefore referred to in relative to time and place and all other things, adapt the same to the issues in this case, and consider all such matters as if such changes had been before submitted.

And it is further stipulated that at any time before the decision of this case the attorneys for plaintiff may file in the case

76 the sworn statement of the clerk of the State board of equalization upon the issue, whether or not the value of fences were included by the board in the assessment of the property described in the complaint, and that, if filed, said statement shall be conclusive upon that issue.

Oct. 2, 1884.

J. E. FOULDS,
H. L. BROWN, &
CREED HAYWARD,
Att'ys for Defendant.

E. C. MARSHALL,
Att'y Gen'l and Att'y for Plaintiff.
W. T. BOGGERT,
JAMES A. WAYMIRE,

[Endorsed:] Filed Oct. 2, 1884. L. S. B. Sawyer, clerk.

77 *Findings.*

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, Defendant. } No. 3264.

The above-entitled cause having been brought on to a hearing before the court without a jury, and the parties by stipulation in writing, filed with the clerk, having waived a jury, and the proofs introduced and given by the respective parties having been fully considered, the court makes the following finding of facts:

I.

That on the 18th day of August, 1883, the State board of equalization of the State of California, acting under the authority of section 10 of article XIII of the constitution of the State of California, and in the mode and manner prescribed by section 3665 of the Political Code of California, assessed the franchise, roadway, roadbed, rails, and rolling-stock of the defendant at the sum of
78 thirteen million dollars; that the board apportioned the said assessment as alleged in plaintiff's complaint; that thereafter and in the manner and at the times prescribed by section 3666 of the Political Code the State board of equalization prepared for that year a book called the Record of Assessment- of Railways, on which book the assessments above referred to was entered and signed by the chairman and clerk; that thereafter, and in the time and manner prescribed by said section, the record of the apportionment of said assessment was made by the board to the counties and cities and counties in a separate book, called "Record of Apportionment of Railway Assessments;" that before the third Monday in October of said year the clerk of the State board of equalization prepared and transmitted to the comptroller of the State duplicates of The Record of Assessment of Railways and The Record of Apportionment of Railway Assessments, each certified by the chairman and clerk of the board; that said duplicates were in manner and form as provided by said section 3666; that the entries upon said books relating to the cause of action stated in the complaint herein are as follows:

From The Record of Apportionment:

79 Name of the corporation, person, or association to whom each railway is assessed, Southern Pacific Railroad Company.

The name of each railway assessed by the State board of equalization, Southern Pacific railroad.

Name of the county and city and county to which the assessment of each railway was apportioned by the board, Fresno, Kern, Los Angeles, Monterey, San Benito, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Tulare.

Number of miles of each railway assessed in the State, 870.74.

Number of miles of each railway assessed by the board in each county and city and county:

Fresno	17.93
Kern	153.47
Los Angeles	142.48
Monterey	49.28
San Benito	17.65
San Bernardino	175.19
San Diego	158.85
San Francisco	7.36
San Mateo	25.10
Santa Clara	59.30
Santa Cruz	2.15
Tulare	61.98

Total value of each railway per mile, $14,929.82

Total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway assessed for purposes of State taxation by the State board of equalization, $13,000,000.00.

The amount of the apportionment of the total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway to each county and city and county for county and city and county taxation:

Fresno	$267,692 00
Kern	2,291,281 00
Los Angeles	2,127,202 00
Monterey	735,742 00
San Benito	263,511 00
San Bernardino	2,615,557 00
San Diego	2,371,603 00
San Francisco	109,884 00
San Mateo	374,739 00
Santa Clara	885,339 00
Santa Cruz	32,099 00
Tulare	925,351 00

Rate of taxation for each county and city and county levied by board of supervisors on each $100:

Fresno	$1.303
Kern	1.153
Los Angeles	.753 and .903
Monterey	1.103
San Benito	1.203
San Bernardino	1.063
San Diego	1.356
San Francisco	1.20
San Mateo	1.153
Santa Clara	.633 and .953
Santa Cruz	1.303
Tulare	1.153

Amount of State taxes due the State upon the whole assessment by each corporation, person, or association assessed for railway—State rate of taxation on each $100, 49.7 cts.—$64,610.

Amount of the county and city and county taxes due upon the assessment apportioned to each county and city and county by each corporation, person, or association assessed for railway:

Fresno	$3,488 02
Kern	26,418 46
Los Angeles	19,016 03
($128,396.45 at .753 rate. $1,998,805.55 at .903 rate.)	
Monterey	8,115 23
San Benito	3,170 03
San Bernardino	27,803 37
San Diego	32,158 93
San Francisco	1,318 60
San Mateo	4,320 74
Santa Clara	8,170 21
($83,458.00 at .633 rate. $801,881 at .953 rate.)	
Santa Cruz	418 24
Tulare	10,669 29

81 *From the Record of Assessments of Railways.*

The State board of equalization being in session on this the 18th day of August, 1883, all the members being present, and having under consideration the assessment of the franchise, roadway, road-bed, rails, and rolling-stock of the Southern Pacific Railroad Company within the State for the year 1883, and it appearing to this board that said company, on the first Monday in March, in the year 1883, at 12 o'clock meridian of that day, owned and still owns 870.74 miles of railroad within this State, which at said time and day in March was and still is operated in more than one county, being the entire railway of said company within this State, and which, with the right of way for the same, is described as follows:

San Francisco. A line of roadway, road-bed, and rails and right of way for the same, begin-ing at depot in 100-vara lot 165 east, corner of 4th and Townsend streets, running thence southwesterly across 4th street; thence southwesterly in and along Townsend street to northwest corner of N. Potrero 133; thence westerly across said last-named corner and through Potrero, blocks 99, 98, 69, 68,
82 45, and 44, to the east line, block 23; thence southwesterly through blocks 23, 21, 22, 7, and 6 to line of Harrison street, where it intersects 16th street; thence south and along Harrison to its intersection of 22nd street; thence southwesterly through blocks 139, 153, 154, 171, 170, 184 to west line of San Jose avenue; thence continuing southwesterly through portions of blocks 6, 32, 33, 34, 57, 56, 55, and 54 to south line of 29th street; thence southerly through blocks 53, 52, and 29 to south line of Randall street, where same intersects old San Jose road; thence along said road southwesterly

through a portion of the San Miquel Rancho to the north line of the Ocean House road; thence southerly through San Miquel to block 2, West End Homestead; thence southwesterly to Railroad avenue; thence along said avenue westerly to northeast line of Rancho Laguna de la Merced; thence continuing southwesterly to a point on the north line of section 1, township 3 south, range 6 west, said point being near center of said line and intersected by the north line of San Mateo county, the right of way averaging thirty feet wide, running a distance of seven and $\frac{36}{100}$ miles in the city and county of San Francisco.

83 San Mateo. Also beginning on south boundary of San Francisco City and county, on the north line of section 1, township 3 south, range 6 west, near the center of said line; thence southeasterly running through the towns of San Bruno, San Mateo, and Redwood city to a point on the San Francesquito creek near the southeast corner of section 24, township 5 south, range 3 west, right of way sixty feet wide, running a distance of twenty-five and $\frac{10}{100}$ miles in San Mateo county.

Santa Clara. Also beginning at a point in center of railroad bridge across San Francesquito creek near the southeast corner of section 34, township 5 south, range 3 west; thence running southeasterly through Mayfield, Mountain View, and Santa Clara to westerly line of San Jose; thence running east to depot in San Jose; thence to 4th street in said city; thence on and with 4th street to southeast line of said city; thence southeasterly to town of Gilroy; thence in same course to Carnardero; thence south to a point near the north bank of Pajaro river in southeast quarter of section 5, township 12 south, range 4 east; thence west with said river to its inter-

84 section with east line of Santa Cruz county; also beginning at Carnardero running thence southeasterly to a point near the center of northeast quarter of northeast quarter of section 27, township 11 south, range 4 east, said point being on north line of San Benito county; the right of way for eighteen miles being sixty feet wide, and for forty miles one hundred feet wide, and for one and $\frac{30}{100}$ miles over public thoroughfares, running thus a distance [of] fifty-nine and $\frac{30}{100}$ miles in Santa Clara county.

Santa Cruz. Also beginning at a point on east line of Santa Cruz county near a point where the southeast corner intersects the Pajara river, running thence westerly with said river to center of railroad bridge crossing said river, right of way one hundred feet wide, a distance of two $\frac{15}{100}$ miles in Santa Cruz county.

San Benito. Also beginning at a point in center of railroad bridge crossing Pajaro river near the center of the north line of section 10, township 12 south, range 3 east; thence westerly to a point about four hundred yards easterly of Landcut station, two and $\frac{25}{100}$ miles, and also beginning at a point near center of northeast quarter

85 of northeast quarter of section 27, township 11 south, range 4 east, near the center of railroad bridge crossing Pajaro river, running thence southeasterly in a direct line to depot in town of Hollister; thence to Tres Pino station, right of way one hundred

feet wide, a distance of seventeen and $\frac{65}{100}$ miles in San Benito county.

Monterey. Beginning at a point in northeast quarter of section 16, township 12 south, range 3 east, said point being on the westerly line of San Benito county, about four hundred yards, more or less, easterly from Landcut station; thence westerly to Pajaro station; thence southerly to a point on north bank of Elkhorn slough, near center of section 28, township 12 south, range 2 east; thence southerly through Castroville and Salinas city to a point in center of section 3, township 17 south, range 5 east; thence southeasterly in a direct line to Soledad depot, right of way one hundred feet wide, a distance of forty-nine and $\frac{28}{100}$ miles in Monterey county.

Fresno. Also beginning at Huron, in said county, running thence in a northeasterly direction to a point on northwest
86 line of Tulare county, intersected by the southerly part of the center line of section 4, township 19 south, range 20 east, right of way one hundred feet wide, a distance of seventeen and $\frac{93}{100}$ miles in Fresno county.

Tulare. Also beginning at intersection of the southwest quarter of the southeast quarter of section 4, township 19 south, range 20 east, with the northwest line of Tulare county, running thence easterly through the towns of Hanford and Lemore to the intersection of Central Pacific and Southern Pacific railroad tracks at Goshen; thence continuing southeasterly through township 19 south, range 24 east to town of Tulare; thence southerly through the town of Tipton to intersection of north line of Kern county with south line of the northeast quarter of the southeast quarter of section 34, township 24 south, range 25 east, right of way one hundred feet wide, running a distance of sixty-one and $\frac{98}{100}$ miles in Tulare county.

Kern. Also beginning at the intersection of the south line of Tulare county with north line of the northeast quarter of northwest quarter of section 2, township 25 south, range 25 east, Mt. Diablo
87 base and meridian, running thence southerly through Delano and Posa to Lerado station; thence southeasterly through Sumner and Tampa to Calienta; thence through Tehichipa Pass and the "Loop" to a point in the southwest quarter of southeast quarter of section 33, township 9 north, range 12 west, San Bernardino base and meridian, which point is on the north line of Los Angeles county, right of way one hundred feet wide, running a distance of one hundred and seventeen and $\frac{83}{100}$ miles in Kern county; also beginning at Mojave, in township 17 north, range 12 west, San Bernardino base and meridian, running thence easterly through township 11 north, range- 12, 11, 10, 9, 8, 7 west, S. B. B. & M., to point on west line of San Bernardino county, in northeast quarter of the northwest quarter section 4, township 10 north, range 7 west, San Bernardino base and meridian, right of way one hundred feet wide, running a distance of thirty-five and $\frac{64}{100}$ miles in Kern county, thus making the total distance of one hundred and fifty-three and $\frac{47}{100}$ miles in Kern county.

Los Angeles. Also beginning at the intersection of north line
88 of northwest quarter of northeast quarter of section 4, town-

ship 8 north, range 12 west, with south line of Kern county, running thence south to a point in section 8, township 5 north, range 11 west; thence southwest to Soledad Pass; thence west through Soledad Pass to Newhall; thence southeasterly through Fernando and San Fernando tunnel to depot in city of Los Angeles, running thence in an easterly direction to a point on west line of San Bernardino county, in the northeast quarter of the northeast quarter of section 28, township 1 south, range 8 west, S. B. B. & M.; also beginning at a point in Los Angeles near depot, running thence through Florence, Compton, Cerito to Wilmington; thence skirting west side of San Pedro Bay to depot at Fayal, width of right of way for one hundred and fifteen miles, one hundred feet; for twenty-one miles, fifty feet; and right of way on public thoroughfares, six and $\frac{48}{100}$ miles, running a distance of one hundred and forty-two and $\frac{48}{100}$ miles in Los Angeles county.

San Bernardino. Also beginning at a point on the east line
89 of Los Angeles county where the east line of northeast quarter of northeast quarter of section 28, township 1 south, range 8 west, San Bernardino base and meridian, intersects said county line, running thence east through said township 1 south, ranges 7, 6, 5, 4 west, to Mound City station; thence southeasterly through San Gorgonia to San Gorgonia Pass to a point on north line of San Diego county intersected by the northeast quarter of the southwest quarter of section 9, township 3 south, range 1 east, Mount San Bernardino base and meridian; also beginning at a point on north line of San Diego county in southwest quarter of northwest quarter of section 11, township 3 south, range 1 east, S. B. B. & M.; running thence east to a point on said north line of San Diego county in southeast quarter of northwest quarter of section 7, township 3 south, range 2 east, S. B. B. & M.; also beginning at a point on east line of Kern county in northeast quarter of northwest quarter of section 4, township 10 north, range 7 west, S. B. B. & M.; thence running in an easterly and southeasterly direction through Kramer, Hinckley, Daggett,
Newberry, and Haslett to a point in the southwest quarter of
90 section 3, township 7 north, range 7 east, and thence continuing in a general southeasterly direction one hundred [and] twenty and $\frac{59}{100}$ miles easterly along the line of the road from said first-named point on the east line of Kern county, right of way one hundred feet wide, running a distance in total of one hundred and seventy-five and $\frac{19}{100}$ miles in San Bernardino county.

San Diego. Also beginning at a point on south line of San Bernardino county in the southeast qnarter of the northwest quarter of section 7, township 3 south, range 2 east, S. B. B. & M.; running thence in a general southeasterly direction through India, Seven Palms, and Palm Springs station to center of bridge across Colorado river in southwest quarter of southeast quarter of section 26, township 16 south, range 22 east, S. B. B. & M., and fractional part of the north half of southeast quarter and the northeast quarter of the southwest quarter of section 10, township 3 south, range 1 east, San
Bernardino base and meridian, right of way one hundred
91 feet wide, running a distance of one hundred and fifty-eight and $\frac{85}{100}$ miles in San Diego county.

Whenever the townships in the above description are described as "townships north" they are north of Mount San Bernardino base and meridian, and whenever the townships are described as "townships south" they are — of Mount Diablo base and meridian, except those which are described as of San Bernardino base and meridian, described as such by name or "S. B. B. & M.;" and it appearing that the actual value of the franchise, roadway, road-bed, rails, and rolling-stock of said company within the State at said date and time in March was and still is the um of thirteen million dollars:

Therefore it is hereby ordered that said franchise, roadway, road-bed, rails, and rolling-stock for the year 1883 be, and the same are hereby, assessed to the Southern Pacific Railroad Company at the sum of thirteen million dollars.

C. E. WILCOXON, *Chairman.*

E. W. MASLIN, *Clerk.*

II.

That the defendant is a corporation existing under the
92 laws of the State of California, except in so far as its existence, rights, privileges, duties, and obligations have been affected by the various acts of Congress hereinafter referred to; that the principal place of business of the defendant now is, and for many years past has been, the city of San Francisco, State of California; that some of its stockholders and members now are, and ever have been, citizens of the United States, resident in the State of California, and some of its stockholders and members now are, and ever have been, citizens of the United States, resident in States other than the State of California.

III.

That as such corporation it constructed a line of railroad and procured the rolling-stock and all appurtenances thereunto belonging known and designated as the Southern Pacific railroad (of California), described as follows: Commencing on the waters of the Pacific Ocean, in the city and county of San Francisco, and extending in a southerly direction through portions of the county of San Francisco and through the county of Santa Clara to Tres Pinos, in the county of San Benito, with a branch therefrom running from Carnadero, in the county of Santa Clara,
93 to Soledad, in the county of Monterey. Said line of railroad also extends from Huron, in Fresno county, to Goshen, in Tulare county, and thence in a southerly direction by way of Tehichepi Pass, Mojava, and Los Angeles to the Colorado river at Fort Yuma, with three branches from said line at Los Angeles, extending, respectively, to Santa Monica, Wilmington, and Santa Ana, in the county of Los Angeles. Said line of railroad is connected with the Texas and Pacific railroad at Sierra Blanca, in the State of Texas, by three railroads, to wit, The Southern Pacific railroad (of Arizona), extending from Fort Yuma to the eastern boundary line of Arizona; The Southern Pacific railroad (of New Mexico), extending from said

eastern boundary line across New Mexico to the western boundary of Texas, and the Galveston, Harrisburg and San Antonio railroad, extending from said last-named boundary to Sierra Blanca. Said several railroads are operated as one continuous line from a point near Marshall, in Texas, to the Pacific Ocean, at San Francisco, for the uses and purposes and in the manner contemplated by
94 the acts of Congress hereinafter referred to. From Tres Pinos to Huron the said Southern Pacific railroad has not been completed, but, pending its construction, connection between said points is made over the lines of the Central Pacific railroad. Defendant has completed the construction of the road from said Southern Pacific railroad to the Colorado river, at or near the Needles, to connect with, and has there connected with, the Atlantic & Pacific railroad, hereinafter referred to, making a continuous line from Springfield, in the State of Missouri, to the Pacific Ocean, as contemplated by the act of Congress hereinafter referred to, chartering the Atlantic & Pacific Railroad Company.

IV.

That of said Southern Pacific Railroad (of California) there had been, prior to the first Monday in March, 1880, completed, and there was in operation in the several counties through which it runs, 711.51 miles, to wit: in the city and county of San Francisco, 7.36 miles; in the county of San Mateo, 25.10 miles; in the county of Santa Clara, 59.30 miles; in the county of
95 Santa Cruz, 2.15 miles; in the county of San Benito, 17.65 miles; in the county of Monterey, 49.28 miles; in the county of Fresno, 17.93 miles; in the county of Tulare, 61.98 miles; in the county of Kern, 53.47 miles; in the county of Los Angeles, 142.48 miles; in the county of San Bernardino, 85.90 miles, and in the county of San Diego, 158.85 miles, and all within the State of California.

V.

That on the 27th day of July, 1866, the Government of the United States undertook to construct or cause to be constructed a line of railroad from a point at or near the town of Springfield, in the State of Missouri, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as might be found suitable for a railroad route to the Colorado river at such point as might be selected, and thence by the most practicable and eligible route to the Pacific Ocean, and to that end Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Ocean," which act was approved on said 27th day of July, 1866. (See United States Statutes at Large, vol. 14, page 292.)
96 By said act certain persons therein named were made and erected into a corporation under the name and style of the "Atlantic and Pacific Railroad Company."

VI.

That to facilitate the construction of said road the Government of the United States, by said act of Congress, adopted the defendant as the instrument or agent of the United States, and conferred upon defendant the same powers and clothed defendant with the same privileges and immunities which it conferred upon and clothed the Atlantic and Pacific Railroad Company with, except that the said defendant was to construct only that portion of said railroad between the Colorado river and the city and county of San Francisco.

VII.

That said Atlantic and Pacific Railroad Company organized under said act and obtained *bona fide* subscriptions to the stock of said company to the amount of one million dollars, with ten per centum paid within two years after the passage and approval of said act of Congress, and said company and defendant, immediately after
97 the passage of said act, accepted the terms and conditions thereof and have duly complied therewith.

VIII.

That said Atlantic and Pacific Company has fully completed the whole of said road from Springfield to the Colorado river, and defendant has constructed said road as aforesaid to Mojavi, with the exception hereinbefore set out.

IX.

That on the 3d day of March, 1871, the Government of the United States undertook to construct or cause to be constructed a line of railroad from Marshall, in the State of Texas, to San Diego, in the State of California, and from said line of road at the Colorado river to construct or cause to be constructed a line of railroad which would connect the road from Marshall to San Diego with the line of road provided for in the act of Congress of July 27th, 1866, hereinbefore referred to, and by means of said connecting road to connect the road from Marshall to San Diego with the city of San Francisco, and to that end Congress passed an act entitled "An act to incorporate the Texas Pacific Railroad Company
98 and to aid in the construction of its road, and for other purposes," approved March 3d, 1870, and subsequently, on the 2d day of May, 1872, passed an act entitled "An act supplementary to an act entitled An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3d, 1871. (See vol. 16, U. S. Statutes at Large, 573; vol. 17, *Id.*, 59.)

X.

That immediately after the passage of said act of March, 1871, the Texas Pacific Railroad Company was organized in pursuance thereof, and it and defendant accepted all the terms and con-

ditions of each of said acts of 1871 and 1872, and have fully and in every respect complied therewith and under them, and in compliance with the spirit and intent of said acts have completed the roads mentioned in the third finding.

XI.

That on the 4th day of April, 1870, the Legislature of the State of California passed an act entitled "An act to aid in giving effect to an act of Congress relative to the Southern Pacific Railroad Company." By the terms of said act and to enable said company to comply with the act of Congress of July 27th, 1866, hereinbefore pleaded, and all other acts of Congress then in force, or which might thereafter be enacted, it was provided that the right to construct, maintain, and operate, by steam or other power, the said railroad mentioned in said acts of Congress, and all the rights, privileges, franchises, power, and authority conferred upon or granted to or vested in said company by the said acts of Congress, and any acts of Congress which might thereafter be enacted, should be confirmed and vested in the defendant. Said act now is, and ever since said 4th day of April, 1870, has been, in full force and effect. (Statutes, 1870, p. 883.)

99

XII.

That on the 1st day of April, 1875, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, in large sums of money advanced to construct and equip the railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said first day of April, 1875, executed and delivered a mortgage upon said Southern Pacific railroad, its franchises, and all rolling-stock and appurtenances, and upon a large number of tracts of land, aggregating over eleven million of acres, situated in different counties in the State of California, which said tracts of land then were, and ever since have been, the property of defendant. Said indebtedness amounts to the sum of forty-six million of dollars, and no part thereof has ever been paid except the accruing interest, and the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been and still is secured by said mortgage, a copy of which, with the endorsements thereon, is annexed to defendant's answer and made a part thereof.

100

XIII.

That the lands mentioned in the preceding subdivision are not and never have been in any way connected with the railroad business of the defendant. They are agricultural and grazing lands held, owned, and used for farming and grazing purposes, and so far as patented are situated as follows, in the counties of the State of California, and are distributed in the respective counties in the following quantities: In Santa Clara county, 3,138 acres;

101

San Benito county, 1,879 acres; Monterey county, 1,879 acres; Stanislaus county, 32,242 acres; Merced county, 20,655 acres; Fresno county, 18,789 acres; Tulare county, 260,315 acres; Kern county, 168,096 acres; Los Angeles county, 38,033 acres; San Bernardino county, 30,686 acres; San Diego county, 5,787 acres.

Said lands and all of them for each of the years 1880, 1881, and 1882 and 1883 were assessed by the assessors of the respective counties in which they are situated at their full cash value, and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby. On the contrary, the laws of the State of California under which said assessors acted in making said assessments prohibited any deduction from said values on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in full, at the
102 time the same became payable, all the taxes levied upon said lands, amounting, in the aggregate, for State, county, and municipal purposes, to $112,947.40.

The laws of the State of California, then and ever since in force, provide that in the assessment and valuation of lands of like character and situation and in every respect similar, both in quality and use, not owned by railroad or other quasi-public corporations, a mortgage thereon, by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and that in the assessment and valuation of such property, for the purposes of taxation, the value of said mortgages shall be deducted therefrom and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties and to enable him to make the deductions aforesaid, the laws of the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages, by which any debt is se-
103 cured remaining unsatisfied on the records of his office at 12 o'clock meridian on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county it shall be the duty of the assessor to transmit to the State board of equalization all information relating thereto; and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county mentioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in such county. (Political Code, sect. 3678.)

In the matter of the valuation of its said lands for the purposes of taxation the defendant is and ever has been deprived of all the benefits of the said laws which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution

104 of the State of California, and the action of assessors in pursuance thereof, while all natural persons and all corporations not quasi public within the State of California are entitled to receive, and do receive, the full benefit of said laws and the deductions required to be made thereunder.

XIV.

That on the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock, or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board.

105 Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property or any part thereof for said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California as amended March 9, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed, as provided in said section, by local assessors.

XV.

That the State board of equalization, in making the said pretended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises as presented in said section 3665, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding they had full knowledge of the existence of such mortgage.

106 XVI.

That in making said pretended assessment the said State board of equalization did not deem or treat said mortgage as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgage thereon.

XVII.

That under section 4 of article XIII of the constitution of California property of natural persons or corporations not quasi-public, having a mortgage, lien, or encumbrance thereon, is not assessed in full to the owner thereof, but the owner is only assessed for the value

of the owner's interest in such property over and above the value of the mortgage, lien, or encumbrance. In the case of the property of railroad and other quasi-public corporations no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or encumbrance; that the tenth section of article XIII of the constitution of the State of California provides the same
107 mode for the assessment of the franchises, roadway, roadbed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations, or by private corporations, or by natural persons.

XVIII.

That at and before and ever since the adoption of the constitution of the State of California now in force there were and are existing under the laws of said State corporations of various kinds formed for the purpose of and actually operating and doing business, holding and using and operating property in more than one county in said State, and that at all of said times there were and now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of the State, and also by natural persons, which are only operated in one county; that corporations in said State of California now are, and ever have been, formed under general laws relating thereto, and railroad and all other
108 corporations, except public corporations formed or organized for the government of a portion of the State, now are, and ever have been, designated by the laws of California as private corporations; that under the provisions of said laws such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; that there now exists in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance; building, constructing, and operating railroads, wagon-roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purpose of acquiring land in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns; for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

And in said State there now are, and for more than three
109 years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations; that there now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said

State, a distance of twenty-seven miles, which said road now is, and ever has been, operated in more than one county in this State and is of the same gauge as the road of defendant and has ever been operated for like uses and purposes.

That said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

That there now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz, eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles.

110 That said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Co., a private corporation formed under the laws of the State of California, which said corporation is not, and never has been, a railroad or quasi-public corporation; that there are now, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which [such] lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws and have been allowed such deductions.

XIX.

That in making said pretended assessment the State board of equalization included the full value of all franchises and corporate powers held and exercised by the defendants.

111 XX.

That said pretended assessment is the only assessment of said property, and the pretended tax for the non-payment of which this action is brought is founded upon said pretended assessment and upon no other.

XXI.

That on the 9th day of November, 1883, the defendant, while then and at all times denying all liability upon said pretended assessment, and claiming that all the proceedings had in relation thereto were in violation of the law and the rights of defendant, tendered and offered to the said plaintiff the sum of $125,806.31 in United States gold coin in part payment of the tax claimed in the complaint, with [an] agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights; that the defendant afterwards brought said sum into court and offered the

same to plaintiff and subjected the same to such orders or judgments as the court might make in the premises; that of the sum so tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $38,766, and on account of the various county taxes claimed it tendered sums as follows, to wit:

For the county of	Fresno	the sum of	$2,092 82
Do.	Kern		15,851 07
Do.	Los Angeles		11,409 62
Do.	Monterey		4,869 14
112 Do.	San Benito		1,902 02
Do.	San Bernardino		16,682 02
Do.	San Diego		19,295 36
Do.	San Francisco		791 16
Do.	San Mateo		2,592 45
Do.	Santa Clara		4,902 13
Do.	Santa Cruz		250 95
Do.	Tulare		6,401 57

That defendant ever since said tender was made kept the same good; that afterwards, to wit, on the 29th day of September, 1884, in this court, upon motion of attorneys for plaintiff, an order was made that the defendant, within five days from said date, make said tender good by paying to Edward C. Marshall, attorney general of the State of California, and one of the attorneys for plaintiff herein, the said sum of $125,806.31 in United States gold coin, to be by said Marshall, upon the receipt thereof, paid
113 into the State treasury of the State of California for the benefit of the State of California and of the counties named in the respective amounts above specified, and it was then and there further ordered by said court, by consent of the parties to the action, that neither the payment nor the receipt of said sum should prejudice or affect any right of either party to this action to maintain or defend it as to the balance claimed in the complaint; that afterwards, to wit, on the 2nd day of October, 1884, in obedience to the said order, the defendant made said tender good by paying to the said Marshall the said sum of $125,806.31 for the uses and purposes and upon the terms and conditions mentioned in the said order.

22.

That the board of equalization never at any time made or adopted any rule or regulation relative to the assessment or valuation of railroad property of any kind; that said board never made or adopted any rule to govern or regulate its proceedings in the
114 exercise of the powers conferred upon it by section ten of article XIII of the constitution of California.

Conclusions of Law.

From the foregoing facts the court finds as a conclusion of law that

the defendant is entitled to judgement in its favor, with costs; and it is so ordered.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed Nov. 10, 1884. L. S. B. Sawyer, clerk.

115 *Judgment.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), Defendant. } No. 3264.

This action came on regularly for trial by the court, a jury trial hereof having been waived by written stipulation of the parties hereto, and the evidence of the respective parties being adduced and the arguments of counsel had thereon, the cause was submitted to the court for consideration and decision, and the court, after due deliberation, having filed its findings in writing and ordered that judgment be entered herein for the defendant in accordance therewith, now, therefore, by virtue of the law and the finding aforesaid, it is considered by the court that the plaintiff take nothing by this action; that the defendant go hereof without day, and that said defendant recover from said plaintiff its costs in this behalf expended, taxed at $—.

Entered this 10th day of November, 1884.

L. S. B. SAWYER, *Clerk.*

A true copy.
Attest:
[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed Nov. 10, 1884. L. S. B. Sawyer, clerk.

116 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
SOUTHERN PACIFIC RAILROAD COMPANY.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgement-roll in the therein-entitled action.

Witness my hand and the seal of said circuit court this 10th day of November, A. D. 1884.

L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON, *Deputy Clerk*,

117 *Authorization that James A. Waymire & Wm. T. Baggett Continue as Att'ys, &c.*

In the Circuit Court of the United States in and for the Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC R. R. CO.

To James A. Waymire, Esq., and Wm. T. Baggett, Esq.

GENTLEMEN: You are hereby requested, authorized, and empowered to continue as attorneys of record for the plaintiff in the above-entitled cause, and, subject to my instructions, to exercise entire control of said cause.

San Francisco, April 28th, 1884.

E. C. MARSHALL,
Attorney General.

Endorsed: Filed April 28, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

118 *Appointment of D. M. Delmas as Att'y for Pl'ff, &c.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD CO., Defendant.

I hereby appoint D. M. Delmas, Esq., attorney for the plaintiff in the above-entitled action in place of Messrs. James A. Waymire and W. T. Baggett.

JOHN P. DUNN,
State Controller.

(Endorsed:) Filed April 28, 1884. L. S. B. Sawyer, clerk.

119 At a stated term, to wit, the February term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-rooms in the city and county of San Francisco on Monday, the 26th day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order that Hon. E. C. Marshall be Entered of Record as Att'y for Pl'ff, and D. M. Delmas, Esq., Substituted as Att'y for Comptroller, &c.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 3264.

A motion to substitute D. M. Delmas, Esq., for James A. Waymire and W. T. Baggett, Esqs., as attorney for plaintiff, and a counter-motion of Hon. E. C. Marshall, attorney general, to retain
120 Messrs. Waymire and Baggett as his representatives, with power as attorneys of record to control said action heretofore argued and submitted, having been duly considered, it is now here ordered that Hon. E. C. Marshall, attorney general of the State of California, be, and he is hereby, directed to be entered as attorney for the plaintiff in the above-entitled action, with power to control the proceedings therein in all matters of difference between him and the other attorneys in the case; and it is further ordered that D. M. Delmas, Esq., be, and he is hereby, substituted as attorney for the comptroller instead of James A. Waymire and W. T. Baggett, Esqs., subject to the control of the action and proceedings therein by the said attorney general, as hereinbefore provided.

121 *Bond on Writ of Error.*

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff in Error,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, a Corporation, Defendant in Error.

Know all men by these presents that we, Louis Marshall and H. A. Greene, are held and firmly bound unto The Southern Pacific Railroad Company, defendant in error herein, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to said The Southern Pacific Railroad Company, its successors or assigns; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the 28th day of July, 1886.

Whereas the above-named The People of the State of Cali-
122 fornia have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered and entered by the circuit court of the United States of America for the district of California in the cause entitled The People of the State of California *vs.* The Southern Pacific Railroad Company, No. 3264:

Now, therefore, the condition of this obligation is such that if the above-named The People of the State of California, plaintiff in error, shall prosecute their said writ of error to effect and answer all costs

if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

LOUIS MARSHALL.
H. A. GREENE.

Signed, sealed, and delivered in the presence of—
F. D. MONCKTON.

UNITED STATES OF AMERICA, } ss:
District of California, }

Louis Marshall and H. A. Greene, being duly sworn, each for himself deposes and says that he is a householder in said district, and is worth the sum of five hundred dollars in lawful money of the United States of America, exclusive of property exempt
123 from execution and over and above all debts and liabilities.

LOUIS MARSHALL.
H. A. GREENE.

Subscribed and sworn to before me this 28th day of July, 1886.

F. D. MONCKTON,
Commissioner of United States Circuit Court, District of California.

Endorsed: The form of the within bond and the sufficiency of the sureties therein are hereby approved. (Signed) Lorenzo Sawyer, circuit judge. Filed July 28th, 1886. L. S. B. Sawyer, clerk.

124 In the Circuit Court of the United States for the Northern District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY. } No. 3264.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, do hereby certify that the foregoing one hundred and twenty-three written and printed pages, numbered from 1 to 123, inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 2d day of September, A. D. 1886.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER, *Clerk.*

125 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit in and for the district of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you,

between The People of the State of California, plaintiffs in error, and The Southern Pacific Railroad Company, defendant in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by *his* complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be[ing] inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

126 [Endorsed:] No. 3264. United States Supreme Court. The People of the State of California, pl'ffs in error, *vs.* The Southern Pacific Railroad Company, def't in error. Writ of error. Service of a copy of within admitted this 23 day of Aug., 1886. H. S. Brown, att'y for def't in error. Filed September 2d, 1886. L. S. B. Sawyer, clerk.

The Answer of the Judges of the Circuit Court of the United States for the District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

[The Seal of the Circuit Court, District of Cal'a.]

By the court:

L. S. B. SAWYER, *Clerk.*

127 UNITED STATES OF AMERICA, *ss*:

To the Southern Pacific Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at

the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the 11th day of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of the ninth judicial circuit in and for the district of California, wherein The People of the State of California are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, this 28th day of July, A. D. 1886, and of the Independence of the United States the one hundred and eleventh.

LORENZO SAWYER,
U. S. Circuit Judge for the District of California.

128 [Endorsed:] No. 3264. In the Supreme Court of the United States. The People of the State of California, pl'ffs in error, *vs.* The Southern Pacific Railroad Company, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged this 23d day of Aug., 1886. H. S. Brown, att'y for def't in error. Filed September 2d, 1886. L. S. B. Sawyer, clerk.

Endorsed on cover: [Stamped:] Supreme Court U. S. Received Sep. 28, 1886. Clerk's office. California C. C. U. S. No. 1036. The People of the State of California, plaintiffs in error, *vs.* The Southern Pacific Railroad Company. Filed September 28, 1886.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1887.—No. 661.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff in Error,

VS.

THE SOUTHERN PACIFIC RAILROAD COMPANY,

Defendant in Error.

Brief on Behalf of Defendant in Error.

HARVEY S. BROWN,

Counsel for Defendant in Error.

SAN FRANCISCO:
BACON & COMPANY, BOOK AND JOB PRINTERS,
Corner Clay and Sansome Streets.

IN THE SUPREME COURT

OF THE

UNITED STATES.

October Term, 1887.—No. 661.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff in Error,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY,
Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Statement of Case.

This action was commenced on the 23d day of February 1884, in the Superior Court of the City and County of San Francisco, by the People of the State of California against the Southern Pacific Railroad Company, to recover certain State and County taxes assessed by the State Board of Equalization on the 18th of August, 1883, against the defendant in error.

The case was removed to the Circuit Court of

the United States for the District of California. There judgment was rendered in favor of the defendant.

The case in this Court stands upon the pleadings and findings, and all of the questions involved are thereon raised.

The answer consists of specific denials of all the matters which go to the validity of the assessment and tax, and those denials would, under the practice in California, have been sufficient to raise every issue passed upon in the findings. (Record, Folios 11 to 15.) By separate answer substantially the same issues were raised. (Record, Folios 15 to 47.) Tender of $125,806.31 was pleaded. (Record, Folio 48.) This tender was accepted, and the money paid. (Record, Folios 111 to 113.)

Points.

THE ASSESSMENT IS VOID, BECAUSE IT INCLUDES PROPERTY WHICH, UNDER THE CONSTITUTION, THE STATE BOARD OF EQUALIZATION HAD NO RIGHT TO ASSESS.

Section 10 of Article XIII of the Constitution of the State of California reads as follows:

SECTION 10. "All property, except as herein-"after in this section provided, shall be assessed

"in the county, city, city and county, town, town-
"ship or district in which it is situated, in the
"manner prescribed by law. The franchise, road-
"way, road-bed, rails and rolling stock of all rail-
"roads operated in more than one county in this
"State shall be assessed by the State Board of
"Equalization at their actual value, and the same
"shall be apportioned to the counties, cities and
"counties, cities, towns, townships, and districts
"in which such railroads are located, in propor-
"tion to the number of miles of railway laid in such
"counties, cities and counties, cities, towns, town-
"ships and districts."

Section 3665 of the Political Code of California, as amended March 9th, 1883, so far as the same is material to the question, is as follows:

"3665. The State Board of Equalization must
"meet at the State Capitol on the first Monday
"in August, and continue in open session from
"day to day, Sundays excepted, until the third
"Monday in August. At such meeting the
"Board must assess the franchise, roadway, road-
"bed, rails and rolling stock of all railroads oper-
"ated in more than one county. Assessment
"must be made to the corporation, person or asso-
"ciation of persons owning the same, and must be
"made upon the entire railway within the State,
"and must include the right of way, bridges, cul-
"verts, wharves and moles upon which the track
"is laid, and all steamers which are engaged in
"transporting passengers, freights, and passenger

"and freight cars across waters which divide the "road. The depots, stations, shops and buildings "erected upon the space covered by the right of "way are assessed by the Assessor of the County "wherein they are situate * * *."

The fourteenth finding of fact (Transcript, folios 104 and 105) reads as follows:

"XIV.

"That on the 18th day of August, 1883, the "State Board of Equalization of the State of Cali- "fornia, pretending to act under and by virtue of "the powers conferred upon it by Sec. 10 of Arti- "cle XIII of the Constiution of the State of Cal- "ifornia, did make a pretended assessment for the "purposes of taxation for the fiscal year of said "State then next ensuing, upon the franchise, "roadway, roadbed, rails and rolling stock of said "railroad against defendant. Said pretended as- "sessment was not made separately upon the fran- "chise, roadway, roadbed, rails and rolling stock, "or any properties of said railroad, but all of said "properties were blended together in making said "assessment, which assessment was then and "there so entered upon the minutes of said Board. "Said assessment is the assessment upon which "the several taxes mentioned in the complaint "herein are based, and no other assessment than "the aforesaid was ever made of said property or "any part thereof, for said fiscal year. Said assess- "ment included all property and kinds of property

"mentioned in Section 3665 of the Political Code "of California, as amended March 9, 1883, except "depots, stations, shops and buildings erected up- "on the space covered by the right of way, which "last mentioned property was assessed, as provid- "ed in said section, by local assessors."

Reading this finding in connection with section 3665 of the Political Code, it appears that the State Board of Equalization, in making the assessment in question, followed the provisions of that section, and included within the assessment not only the property which it was authorized to include by the State Constitution, but property which the State Constitution provides shall be assessed by the local assessors; to wit, wharves and moles upon which tracks are laid, and steamers engaged in transporting freights and passengers.

Section 3665 is clearly unconstitutional, and the assessment made in accordance with it must fall. This is no longer an open question; the principle involved having been determined by both this Court and the highest Court of the State of California.

Santa Clara Co. vs. *Southern Pacific R. R. Co.*, 118 U. S., p. 394; *City and County of San Francisco* vs. *Central Pacific R. R. Co.*, 63 Cal. 467.

II.

THE STATUTES UNDER WHICH THE PROCEEDINGS IN THIS CASE WERE INSTITUTED IN THE COURT BELOW, AS WELL AS THE STATUTE IN FORCE WHICH PRESCRIBES THE MODE AND MANNER OF COLLECTING TAXES ASSESSED BY THE STATE BOARD OF EQUALIZATION, VIOLATE THE PROVISIONS OF THE STATE CONSTITUTION, AND ARE VOID.

The laws in question are found in sections 3666, 3667, 3668, 3669 and 3670 of the Political Code, as amended March 9th, 1883. They are as follows:

SEC. 3666. "The State Board of Equalization "must prepare each year a book to be called 'Rec- "ord of Assessment of Railways,' in which must "be entered each assessment made by the Board, "either in writing, or by both writing and print- "ing. Each assessment so entered must be signed "by the Chairman and Clerk. The record of the "apportionment of the assessments made by the "Board to the counties, and cities and counties, "must be made in a separate book, to be called "'Record of Apportionment of Railway Assess- "ments.' In such last described book must be "entered the names of the railways assessed by the "Board, the names of the corporation to which "or the name of the person or association to "whom each railway was assessed, the whole num- "ber of miles of the railway in the State, the num-

'ber of miles thereof in each county, or city and "county, the total assessment of the franchise, "roadway, roadbed, rails and rolling stock for pur- "poses of State taxation, the amount of the ap- "portionment of such total assessment to each "county, and city and county, for county and city "and county taxation. Before the third Monday "of October of each year the Clerk of the State "Board of Equalization must prepare and trans- "mit to the Controller of State duplicates of the "'Record of Assessment of Railways,' and 'Rec- "ord of Apportionment of Railway Assessments,' "each certified by the chairman and clerk of the "Board, and to be known respectively as 'Dupli- "cate Record of Assessment of Railways,' and "'Duplicate Record of Apportionment of Railway "Assessments.' In the last named duplicate two "columns must be added, in one of which the "Controller must enter the State taxes due the "State, upon the whole assessment, by each cor- "poration, person or association; and in the other "the county or city and county taxes due upon "the assessment apportioned to each county or "city and county by each corporation, person or "association. The two duplicates constitute the "warrant for the Controller to collect the state and "county and city and county taxes levied upon "such property assessed by the Board, and the "amount of the apportionment of the assessment "to each county, and city and county, respective- ly." (New section, approved March 9, 1883; Statutes and Amendments 1883, p. 65; went into effect immediately.)

"must be placed in a fund to be called 'Rail-
"way Tax Fund,' to the credit of each county, and
"city and county entitled thereto. When any
"taxes are placed in the 'Railway Tax Fund' to
"the credit of a county, or city and county, the
"Controller, at the next settlement with the Con-
"troller by the Treasurer of such county, or city
"and county, must draw and deliver to such Treas-
"urer his warrant upon the State Treasurer for
"the amount in the fund to the credit of such
"county or city and county."

SEC. 3669. "Each corporation, person, or as-
"sociation assessed by the State Board of Equaliz-
"ation must pay to the State Treasurer, upon the
"order of the Controller, as other monies are re-
"quired to be paid into the Treasury, the state
"and county, and city and county taxes, each
"year levied upon the property so assessed to it
"or him by said board. Any corporation, person,
"or association dissatisfied with the assessment
"made by the board upon the payment of the tax-
"es due upon the assessment complained of, and
"the five per cent. added, if to be added, on or
"before the first Monday in February, and the fil-
"ing of notice with the Controller of an intention
"to begin an action, may, not later than the first
"Monday of February, bring an action against
"the State Treasurer, for the recovery of the
"amount of taxes and percentage so paid to the
"Treasurer, or any part thereof; and in the com-
"plaint may allege any fact tending to show the
"illegality of the tax, or of the assessment upon

"which the taxes are levied, in whole or in part. "A copy of the complaint and of the summons "must be served upon the Treasurer within ten "days after the complaint has been filed, and the "Treasurer has thirty days within which to demur "or answer. At the time the Treasurer demurs "or answers he may demand that the action be "tried in the Superior Court of the County of "Sacramento. The Attorney General must defend "the action. The provisions of the code of civil "procedure, relating to pleadings, proofs, trials "and appeals are applicable to the proceedings "herein provided for. If the final judgment be "against the Treasurer, upon presentation of a "certified copy of such judgment to the Control-"ler, he shall draw his warrant upon the State "Treasurer, who must pay to the plaintiff the "amount of the taxes so declared to have been il-"legally collected, and the cost of such action, "audited by the Board of Examiners, must be paid "out of any money in the general fund of the "Treasury, which is hereby appropriated; and the "Controller may demand and receive from the "county, or city and county interested the pro-"portion of such costs, or may deduct such pro-"portion from any money then or to become due "to said county, or city and county. Such ac-"tion must be begun on or before the first Mon-"day in February of the year succeeding the year "in which the taxes were levied, and a failure to "begin such action is deemed a waiver of the "rights of action."

SEC. 3670. "After the first Monday of Feb-
"ruary of each year, the Controller must begin an
"action in the proper court, in the name of the
"People of the State of California, to collect the
"delinquent taxes upon the property assessed by
"the State Board of Equalization. Such suit must
"be for the taxes due the State, and all the coun-
"ties and cities and counties, upon property as-
"sessed by the Board of Equalization, and ap-
"pearing delinquent upon the 'duplicate record
"of apportionment of railway assessments.' The
"demands for state and county, and city and
"county taxes may be united in one action. In
"such action a complaint in the following form
"is sufficient:

[Title of Court.]

"The People of the State of California,
vs.
(Naming the Defendant).

"Plaintiff avers that on the day of ,
"in the year (naming the year), the State Board
"of Equalization assessed the franchise, roadway,
"roadbed, rails, and rolling stock of the defend-
"ant, at the sum of (naming it) dollars: That the
"Board apportioned the said assesment as fol-
"lows: To the county of (naming it) the sum of
"(naming it) dollars, and so on (naming each
"county).

"That the defendant is indebted to plaintiff for
"state and county taxes for the year 18—, in the
"following sums: For state taxes, in the sum of
"(naming it) dollars; for county taxes of the

"county of (naming it), in the sum of (naming it) "dollars, etc., with five per cent. added for non- "payment of taxes. Plaintiff demands payment "for said several sums, and prays that an attach- "ment may issue in form as prescribed in Sec- "tion 540 of the Code of Civil Procedure.—(Signed by the Controller or his Attorney.)

"On the filing of such complaint the clerk "must issue the writ of attachment prayed for, "and such proceedings shall be had as under "writs of attachment issued in civil actions. No "bond nor affidavit previous to the issuing of the "attachment is required. If in such action the "plaintiff recover judgment, there shall be in- "cluded in the judgment as counsel fees—and in "case of judgment of taxes, after suit brought but "before judgment, the defendant must pay as "counsel fees--such sum as the court may deter- "mine to be reasonable and just. Payment of "the taxes or the amount of the judgment in the "case must be made to the State Treasurer. In "such actions the duplicate record of assessments "of railways and the duplicate record of appor- "tionment of railway assessments, or a copy of "them, certified by the Controller, showing unpaid "taxes against any corporation, person, or asso- "ciation, for property assessed by the State "Board of Equalization, is prima facie evidence "of the assessment, the property assessed, the de- "linquency, the amount of the taxes due and un- "paid to the state, and counties, or cities and "counties therein named, and that the corpora- "tion, person or association is indebted to the

"people of the State of California in the amount "of taxes, state and county and city and connty "therein appearing unpaid, and that all the forms "of law in relation to the assessment and levy of "such taxes have been complied with."

(New section, approved March 9, 1883; Statutes and Amendments, 1883, 65; went into effect immediately.)

The general laws of California provide for the assessment and collection of taxes, and also regulate the practice of courts of justice. The Constitution of the State of California, Article IV, Section 25 provides:

SEC. 25. "The legislature shall not pass local "or special laws in any of the following enumerat- "ed cases, that is to say: * * *

"*Third.*—Regulating the practice of courts of "justice. * * *

"*Tenth.*—For the assessment or collection of "taxes. * * *

The People of the State of California commenced an action in a State Court, to recover the taxes claimed to be due from the railroad companies for the fiscal year ending July 1st, 1886. The companies demurred, and among other points, raised the one here stated. The demurrer was sustained, one of the ablest Judges in the State rendering an opinion, holding both upon principle and upon the authority of the decisions of the

highest Court of the State, that the laws in question were special. That they were within the inhibition of the Constitution for two reasons: first, that they regulated the practice of Courts of justice; and second, that they provided for collection of taxes; neither of which could be done by special laws.

From that judgment the People have taken an appeal to the Supreme Court of the State, where the case is now pending.

III.

These Points Decisive.

If these positions are tenable, there will be no occasion to consider the grave questions of constitutional law involved, for in that event the judgment can be affirmed, upon the ground that the assessment could not be the basis of a judgment against the defendant.

Santa Clara Co. *vs.* S. P. R. R, 118 U. S., p. 411.

The Federal Questions Involved.

There are certain Federal Questions which may be raised upon the record, and which will come to the Court for determination, if the case is not disposed of on the State questions.

They are:

1. That defendant's road is a part of a continuous postal and military route, constructed and maintained under the authority of the United States by means in part obtained from the general Government; that the Company having, with the consent of the State, become subject to the requirements, conditions and provisions of the Acts of Congress, it thereby ceased to be merely a State corporation, and become one of the agencies or instrumentalities employed by the general Government to execute its constitutional powers; and that the franchise to operate a postal and military route, for the transportation of troops, munitions of war, public stores, and the mails, being derived from the United States, cannot, without their consent, be subjected to State taxation.

2. That a tax upon defendant's franchise is a tax upon Interstate Commerce.

3. That the provisions of the Constitution and laws of California, in respect to the assessment for taxation of the property of railway corporations, operating railroads in more than one county, are in violation of the Fourteenth Amendment of the Constitution, in so far as they require the assessment of their property at its full money value, without making deduction, as in the case of railroads operated in one county, and of other corporations and of natural persons, for the value of

mortgages covering the property assessed; thus imposing upon the defendant unequal burdens, and to that extent denying to it the equal protection of the law.

4. That the provisions of the Constitution and laws of California, which provide for the assessment of the property of railroad companies operating in two or more counties, deny to such companies the equal protection of the law.

5. That the provisions of the Constitution and laws of the State of California, which provide for the assessment of the property of railroad companies operating in two or more counties, would, if enforced, deprive such companies of their property without due process of law.

These Federal Questions are presented in brief herewith filed in the case of the People of the State of California, Plaintiff in Error, against the Central Pacific Railroad Company, Defendant in Error, calendar No. 664, which case, under the order of this Court, will be argued with this. The defendant in error asks to be permitted to refer to the brief in that case and to make it part hereof.

All of which is respectfully submitted.

HARVEY S. BROWN,

Counsel for Defendant in Error.